CLERK'S COPY:

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 631

LEE VAN WOODS, PETITIONER,

vs.

WALTER WILKINSHEIMER, WARDEN, ILLINOIS STATE PENITENTIARY, MENARD, ILLINOIS

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF RANDOLPH COUNTY, STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED NOVEMBER 26, 1945.

CERTIORARI GRANTED FEBRUARY 25, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 631

LEE VAN WOODS, PETITIONER,

vs.

WALTER NIERSTHEIMER, WARDEN, ILLINOIS STATE PENITENTIARY, MENARD, ILLINOIS

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF RANDOLPH COUNTY, STATE OF ILLINOIS

INDEX

	Original	Print
Record from Circuit Court of Randolph County	1	1
Record from Circuit Court of Randolph County—Continued		
Convening and adjourning orders	1	1
Affidavit in forma pauperis	4	1
Motion for leave to proceed in forma pauperis	6	2
Petition for writ of habeas corpus	8	3
Exhibit "A"—Judgment and commitment by Criminal Court of Cook County	14	9
Order granting leave to proceed in forma pauperis and denying petition for writ of habeas corpus	17	11
Clerk's certificate (omitted in printing)	18	
Order granting motion for leave to proceed in forma pauperis	19	11
Order allowing certiorari	20	11

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 19, 1946.

—3576

[fol. 1]

IN THE CIRCUIT COURT OF RANDOLPH COUNTY. ILLINOIS

CONVENING AND ADJOURNING ORDERS

[fols. 2-3] Sept. 24, 1946. Now on this day Court is duly convened at the hour of 9:30 o'clock A. M., with the Honorable Ralph L. Maxwell as Judge presiding and all other officers of Court being present to-wit: Harold Hahn, Circuit Clerk, David N. Conn, State's Attorney and Elmo N. Morrison, Sheriff.

Now again on this same day at the hour of 5:00 o'clock P. M. Court is adjourned for the day.

Oct. 2, 1946. Now on this day Court is duly convened at the hour of 9:30 o'clock A. M. with the Honorable Ralph L. Maxwell as Judge Presiding and all other officers of Court being present to-wit: Harold Hahn, Circuit Clerk, David N. Conn, State's Attorney and Elmo N. Morrison, Sheriff.

Now again on this same day at the hour of 4:00 o'clock P. M., Court is adjourned for the day.

[fols. 4-5] IN CIRCUIT COURT OF RANDOLPH COUNTY

The People of the State of Illinois, ex rel, LEE VAN WOODS, Petitioner,

vs.

WALTER NIERSTHEIMER, Warden Illinois State Penitentiary, Menard, Illinois, Respondent

AFFIDAVIT IN FORMA PAUPERIS

Comes now, Lee Van Woods, plaintiff in the above entitled cause and being first duly sworn, on oath deposes and says, to-wit: that he is petitioner in the above entitled cause; that he verily believes he has a good valid and sufficient cause of action; that he has no money or funds with which to pay the costs or fees to prosecute his cause; that he has no property or other assets with which to pay the said costs and fees; that he verily believes he is entitled to the relief he seeks, the same being a writ of habeas corpus to effect his release from his imprisonment; that his foregoing

statements are true and correct and that he is ready and willing to verify the same.

Lee Van Woods, Affiant.

Subscribed and sworn to before me on this 25 day of September, A. D. 1945. James A. Denny, Notary Public. (N. P. Seal.)

[fols. 6-7] In Circuit Court of Randolph County

[Title omitted]

Motion for Leave to Proceed in Forma Pauperis

Comes now, Lee Van Woods, petitioner in the above entitled cause and respectfully moves the court that because of his poverty that he be permitted to prosecute his cause of action as a poor person, as provided in the Laws of Illinois, Ill. Rev. Stat. 1941, Ch. 33, par. 5, without the payment of costs or fees.

It is further moved that the Court order the usual and necessary process that may be needed to issue, as provided by the Laws of Illinois, Ill. Rev. Stat. 1941, Ch. 33, par. 6, without payment of costs or fees.

Respectfully submitted, Lee Van Woods, Petitioner, Pro se.

Lee Van Woods, Petitioner, Reg. No. 17295. Illinois State Penitentiary, Menard, Illinois.

[fol. 8] In Circuit Court of Randolph County

The People of the State of Illinois ex Rel. Lee Van Woods, Petitioner,

vs.

Walter Nierstheimer, Warden, Illinois State Penitentiary, Menard, Illinois

Petition for the Writ of Habeas Corpus

Comes, now, Lee Van Woods, petitioner in the above entitled cause, and respectfully represents unto the Court, that:

I. The action arises under the Constitution of the United States, an action to redress the deprivation of his right of due process of law as guaranteed by Section 1 of the Fourteenth Amendment; an action within the original jurisdiction of the Court as given by the Constitution of Illinois, Section 12, Article VI; an action within the statutory powers and jurisdiction given to this court by the Laws of Illinois, Ill. Rev. Stat. 1941, ch. 37, pars. 72:25; 72:26; an action within the provisions of Section 2 of the Habeas Corpus Act, Ill., Rev. Stat. 1941, ch. 65, par. 2, as an application to a Court of competent jurisdiction of where the petitioner is confined.

II. The petitioner is imprisoned in the Illinois State Penitentiary at Menard, Illinois, by the respondent Walter Nierstheimer, Warden of the said institution.

III. The cause or pretents of his imprisonment is an order of commitment issue- by the Criminal Court of Cook County, Illinois, in case entitled People v. Woods, Gen. No. 40-463 of said Court wherein the petitioner purportedly made a free and voluntary confession to the crime of murder, had competent counsel appointed for him, and entered a free and voluntary plea of guilty to the crime of murder and the judgment of the Court sentenced him to the Illinois State Penitentiary for the term of 99 years. Copy of the said order hereto attached, marked Exhibit "A", and reference made a part hereof.

IV. The true and correct facts regarding the petitioner free and voluntary confession, the appointment of compe-

tent counsel for the petitioner and his free and voluntary plea of guilty, and his arrest is as follows:

That on or about March 8 or 9, 1940, the Chicago Police came to the petitioner- place of residence and put the petitioner under arrest. The police took the petitioner into his bedroom and put revolves to the petitioner- head, beating the petitioner and telling the petitioner if he moved they the police would blow his brains out. In answer to the petitioner- inquir-es as to why he was being treated that [fol. 9] way, they the police, then accused the petitioner of the crime of murder, the police kept asking him what the petitioner did with the gun.

A search was made of the petitioner- room and several guns were found which belonged to the petitioner. Upon the finding of the guns the police began beating the petitioner trying to make him confess, this the petitioner refused to do, then the petitioner was told that he would confess before they the police got through with him.

The petitioner was taking from his residence and put into a police car and was taken to the police station, while on the way there, the police put lighted cigarettes in petitioner- face, demanding from him "Are you going to talk nigger." The Police in charge of the officers who was later learned by the petitioner, to be a Serg-ant Bob Hornett: The petitioner arrived at the station, name and location unknown, about 12:00 noon, the petitioner was steadely questioned and beaten until 7:30 P. M. being told that he killed him and that the petitioner better confess, when it was learned that the petitioner would not confess the petitioner was put into a cell and as often as he tried to recuperate from the beatings the petitioner was called for more questioning.

The following morning the petitioner was given a cup of coffee and a doughnut and was told that he would not get anything more to eat nor any tobbacco until the petitioner confessed. The petitioner was beaten some more at this station and then taken to the 48th Street Station, where he was again beaten and questioned until about 2:00 P. M. At all times the petitioner protested his innocence of the crime which the police were trying to make him confess too.

Sometime that afternoon the petitioner was taken to the Stanton Avenue Station where the police took him in the basement and handcuffed the petitioner to a pipe on the ceiling, beating the petitioner with blackjacks, clubs and

hands. The officer in charge of the police at the time of the arrest, was Serg-ant Bob Hornett, also this Serg-ant Hornett was there most of the time supervising the treatment. The questioning and beatings was continued for two days then the petitioner was taken and put in a line up for identification. Witnesses were brough- and upon the assistance of the police that he the petitioner was the man and upon the petitioner- pleas to one witness that this witness be fair this witness said he did not know for sure but that the petitioner might be the man.

Then the petitioner was taken to the office of the station where a person in civilian clothes questioned him, the petitioner at all times protested his innocence. The petitioner was taken out of this office and while the petitioner was leaving he heard this person tell the police to get a confession. [fol. 10] About the fourth day after petitioner- arrest he was taken to the States Attorney's office at 26th Street and California where the petitioner was told to sign some papers. The petitioner was attempting to read these papers, when Serg-ant Hornett began beatings again telling the petitioner to sign them or he would finish the job of killing the petitioner. The petitioner could not stand any more beatings so the petitioner signed the papers which later learned was a confession.

The petitioner was then taken before a judge and bound over to the grand jury.

On March 14, 1940, the grand jury returned the indictment, Gen No. 4-463, charging the petitioner with the murder of Stephen Broscoe on March 6, 1940, George Jones being impleaded with the petitioner. On March 15, 1940, the petitioner was taken before the Chief Justice of the Criminal Court, Judge John Prystalshi, who appointed the Public Defender as counsel for the petitioner in the trial of the cause and assigned the cause to Judge William J. Lindsay. The petitioner was then returned to the County Jail, the Public Defender never came to consult with the petitioner in regards to the facts of the crime charged against the petitioner.

On May 20, 1940, the petitioner was taken to the Court-room-bull-pen to await his trial, while there a colored man came to see the petitioner telling him that he was the petitioner- lawyer and had been appointed to defend the petitioner. The petitioner was told by this lawyer that everything was fixed. The counsel would not listen to the facts

and matters concerning the treatment the petitioner received by the police, the counsel kept saying that the petitioner should let him handle it as he was a lawyer and knew what he was doing and that he the lawyer would handle everything.

From the evidence given at the trial the petitioner first learned that he was supposed to have shot Stephen Broscoe about 6:35 P. M. the night of March 6, 1940. The petitioner tried to tell the judge that the petitioner did not know anything of the crime, but the petitioner counsel pulled him back into his seat and told the petitioner that he had pleaded guilty, that if the petitioner did not keep his mouth shut he would go to the electric chair, the States attorney also saying if the petitioner don't keep his mouth shut he will burn. At no time did the petitioner- counsel objected to the proceedings in the Court, examine the witnesses, nor put forth any evidence for the petitioner- defense, at the close of the States evidence the ptitioner counsel told the Court, that the petitioner was guilty and should receive a prison sentence which should keep the petitioner in prison for the rest of petitioner- life, a sentence of ninety nine (99) years being imposed on May 21, 1940.

At the time of the crime which the petitioner was charged with the petitioner could have proven that he was at a friend- house from where he went to his own place of [fol. 11] residence at 4733 Michigan Ave., Chicago, Illinois, here the petitioner played cards with others and from there the petitioner called up other friends. This was told to the counsel on the day of the petitioner- trial, but petitioner-lawyer said due to the confession which was signed in the States Attorney's office, he the counsel could not get witnesses and that only a plea of guilty could be had under the circumstances. At no time did the petitioner authorize the Public Defender to enter a plea of guilty or entered such a plea himself, at all time the petitioner pleaded not guilty and protested his innocence to the crime charged.

At the time of the trial the petitioner was a pauper without sufficient funds or means to employ counsel to defend him and was under the circumstances compelled to accept the service of the Public Defender, the petitioner was twenty-two years of age and a public school graduate without any legal knowledge and was a user of marijuana which left the petitioner sick and nervous and living in

a world of fog and after the petitioner was in prison a long time which is five years, Legal knowledge was made available. The petitioner have study for the last nine months and have learned that he had been deprived of his rights by the officers of the Court.

(A)

The purported free and voluntary confession which was obtained from him was obtained by the use of copious beatings by the Chicago Police which intimidated and coerced him into signing the confession after he had lost his powers of physical and mental resistance.

(B)

The Public Defender of Cook County, Illinois, who had been appointed to represent him because of his poverty, did not consult with him in regards to the facts of the case, at no time prior to the date of the trial, and when told the facts by which the confession had been obtained refused to consider them, telling the petitioner herein that he was guilty, that no defense could be had because of the confession, that a plea of guilty was the only plea he could enter under the circumstance and that he was going to withdraw the petitioner- plea of not guilty and enter a plea of guilty.

(C)

The petitioner plea of not guilty was withdrawn and a plea of guilty entered over his protests and when he attempted to tell the Court of the actions taken the States Attorney and Public Defender both threatened him with a sentence to the electric chair if he did not maintain his silence.

5. That the order of judgment entered by the Criminal Court of Cook County, Illinois, as set forth, in paragraph 3, is not an order of a court of competent jurisdiction, because of the following matters.

(A)

The use of duress, intimidation and coercion to obtain the confession of the petitioner to the crime he was charged [fol. 12] with was without due process of law, or any process of law, in violation of his rights as guaranteed by the Con-

stitution of the United States and particularly by Section 1 of the Fourteenth Amendment thereto, which he here and now pleads and relies upon to obtain redress for the wrong done him.

(B)

The actions of the Public Defender, in failing to consult with the petitioner prior to the trial to prepare a defense and put the true facts before the Court, deprived him of his right to the assistance of competent counsel and the usual and accustomed incidentals of consultation and preparation without due process of law, or any process of law in violation of his right as guaranteed by the Constitution of the United States, and particularly by Section 1 of the Fourteenth Amendment thereto, which he here and now pleads and relies upon to obtain redress for the wrong done him.

(C)

The actions of the officers of the Court in withdrawing the petitioner's plea of not guilty and entering a plea of guilty over his protests and subsequently using duress, intimidation and coercion to cause him to maintain his silence, deprived him of his right to a fair and impartial trial without due process of law, or any process of law, in violation of his right as guaranteed by the Constitution of the United States, and particularly by Section 1 of the Fourteenth Amendment thereto which he here and now pleads and relies upon to obtain redress for the wrong done him.

6. That the said respondent held illegally in custody said petitioner under the said void, null and unconstitutional order, set forth in paragraph 3, and therefore said petitioner is entitled to his discharge from custody under said order.

7. That the said order is not an order, process judgment or decree specified in Section 21 of the Habeas Corpus Act, Ill. Rev. Stat. 1941, Ch. 65, par. 21.

8. To be released from which said imprisonment your petitioner now applies, praying that a writ of habeas corpus to be directed to the said Walter Nierstheimer, Warden Illinois State Penitentiary at Menard, Illinois, may issue in this behalf pursuant to the statute in such case, made and provided, so that your petitioner may be forthwith, brought

before this Court to do, submit to and receive what the Constitution of the United States may require in that behalf.

Respectfully submitted, Lee Van Woods, Petitioner Pro Se.

[fol. 13] *Duly sworn to by Lee Van Woods. Jurat omitted in printing.*

[fol. 14] EXHIBIT "A" TO PETITION

UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

Pleas before a Branch of the Criminal Court of Cook County, in said County and State, at a term thereof begun held at the Criminal Court House in the City of Chicago, in said County, on the first Monday (being the sixth day of May, in the year of our Lord one thousand nine hundred and forty and of the independence of the United States the one hundred and sixty-fourth).

Present Hon. William J. Lindsay, Judge of the Superior Court of Cook County and Ex-Officer Judge of the Criminal Court of Cook County.

Attest: Thomas J. Courtney, State's Attorney; Thomas J. O'Brien, Sheriff; Thomas J. Bowler, Clerk.

No. 40-463

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

LEE VAN WOODS (Impleaded)

INDICTMENT FOR MURDER

This day come the said People, by Thomas J. Courtney, State's Attorney, and the said defendant as well in his own proper person as by his counsel also comes on now neither the said defendant nor his counsel for him saying anything further why the judgment of the Court should not now be

pronounced against him on the plea of guilty heretofore rendered to the indictment in this cause.

Therefore, it is considered ordered and adjudged by the Court that the said defendant Lee Van Woods is guilty of the said Crime of Murder in manner and form as charged in the indictment in this cause, and the said plea and judgment of guilty, and that he be and is hereby sentenced to confinement at hard labor in the Illinois State Penitentiary for said crime of murder in manner and form as charged in the indictment, whereof he stands convicted and adjudged guilty, for the term of ninety-nine (99) years from and after the delivery of the body of said defendant Lee Van Woods to the Illinois State Penitentiary, and that the said defendant Lee Van Woods be taken from the bar of the Court to the Common jail of Cook County, from whence he came and from thence by the Sheriff of Cook County to the Department of Public Welfare and the said department of Public Welfare is hereby required and commanded to take the body of the said defendant Lee Van Woods and confine him in said Penitentiary, in safe and secure custody, for and during the term of ninety nine (99) years from and after delivery thereof, at hard labor, and that he be thereafter discharged.

[fols. 15-16] It is further ordered that the said defendant pay all the costs of these proceedings, and that execution issue therefore.

State of Illinois,
County of Cook, ss:

I, Thomas J. Bowler, Clerk of the Criminal Court of Cook County, in said County and State, do hereby certify the above and foregoing to be a true, perfect and complete copy of an order entered of Record in said Court of The People of the State of Illinois, versus Lee Van Woods.

Witness Thomas J. Bowler, Clerk of said Court, and the seal thereof, at Chicago, in said County, this twenty-second day of May A. D. 1940.

to the Sheriff of Cook County to execute.

(S.) Thomas J. Bowler, Clerk.

[fol. 17] In Circuit Court of Randolph County

Habeas Corpus No. 1172

People of the State of Illinois ex rel. Lee Van Woods

vs.

Walter Niersth-imer, Warden Illinois State Pentitentiary, Menard, Illinois

Order Granting Leave to Proceed in Forma Pauperis and Denying Petition for Writ of Habeas Corpus—October 2, 1945

Leave to sue as poor person granted. Petition for Writ of Habeas Corpus denied for want of jurisdiction and failure to state a cause of action.

Ralph L. Maxwell, Judge of the Circuit Court of Randolph County, Ill.

[fol. 18] Clerk's Certificate to foregoing transcript omitted in printing.

---

fol. 19 Supreme Court of the United States

Order Granting Motion for Leave to Proceed in Forma Pauperis—February 25, 1946

On consideration of the motion for leave to proceed *in forma pauperis* in this case,

It is ordered by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice Jackson took no part in the consideration or decision of this motion.

[fol. 20] Supreme Court of the United States

Order Allowing Certiorari—Filed February 25, 1946

The petition herein for a writ of certiorari to the Circuit Court of Randolph County, State of Illinois, is granted and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

Endorsed on Cover: In forma pauperis Enter Lee Van Woods pro se. File No. 50334. Illinois, Circuit Court of Randolph County. Term No. 631. Lee Van Woods, Petitioner, vs. Walter Nierstheimer, Warden, Illinois State Penitentiary, Menard, Illinois. Petition for writ of certiorari. Filed November 30, 1945. Term No. 631 O. T. 1945.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 671

LEE VAN WOODS, PETITIONER,

vs.

WALTER HERRINGTON, WARDEN, ILLINOIS STATE PENITENTIARY, MENARD, ILLINOIS

ON WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY, STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED SEPTEMBER 15, 1945.

CERTIORARI GRANTED FEBRUARY 25, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 671

LEE VAN WOODS, PETITIONER,

vs.

WALTER NIERSTHEIMER, WARDEN, ILLINOIS STATE PENITENTIARY, MENARD, ILLINOIS

ON WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY, STATE OF ILLINOIS

INDEX

	Original	Print
Record from Criminal Court of Cook County	1	1
Caption (omitted in printing)	1	
Order setting petition for hearing, etc.	1	1
Order filing petition, etc.	3	1
Affidavit in forma pauperis	4	2
Motion for leave to proceed in forma pauperis	5	2
Petition for writ of habeas corpus	6	3
Exhibit "A"—Judgment and commitment by Criminal Court of Cook County	15	9
Motion to dismiss petition	17	11
Order dismissing petition	19	12
Clerk's certificate (omitted in printing)	20	
Certificates of attestation (omitted in printing)	21	
Order granting motion for leave to proceed in forma pauperis	22	12
Order allowing certiorari	23	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 14, 1946.

—3478

[fol. 1] [Caption omitted]

IN CRIMINAL COURT OF COOK COUNTY

Habeas Corpus No. 29807

THE PEOPLE OF THE STATE OF ILLINOIS ex Rel. LEE VAN WOODS

vs.

WALTER NIERSTHEIMER, Warden, Illinois State Penitentiary, Menard, Illinois

ORDER SETTING PETITION FOR HEARING, ETC.—October 10, 1945

This day come the said Relator by his Counsel and presents his Petition for a Writ of Habeas Corpus together with an Affidavit in Forma Pauperis and Motion in support thereof.

And it is ordered by the Court let the Petition for Writ of Habeas Corpus be filed without Costs, and hearing on issuance of the Writ set before me on the twenty-fourth day of October, A. D. 1945, at 10:00 o'clock, A. M.

And it is further ordered by the Court that Attorney Frank Ferlic, Assistant Public Defender of Cook County, [fol. 2] Illinois, be and he hereby is appointed as a Friend of the Court in this cause; which said Order, Affidavit in Forma Pauperis, Motion and Petition for Writ of Habeas Corpus were filed in the Office of the Clerk of the Criminal Court of Cook County, Illinois, and are in words and figures following, to-wit:

[fol. 3] IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

ORDER FILING PETITION ETC.—Filed October 10, 1945

Let the Petition for Writ of Habeas Corpus be filed without costs, and hearing on issuance of the Writ set before me on the 24 day of October, A. D. 1945, at 10:00 A. M., and let Assistant Public Defender, Frank Ferlic, be appointed as a Friend of the Court in this cause.

Harold G. Ward, Chief Justice of the Criminal Court of Cook County.

[File endorsement omitted.]

[fol. 4] IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

AFFIDAVIT IN FORMA PAUPERIS

Comes now, Lee Van Woods, petitioner in the above entitled cause, and being first duly sworn, on oath, deposes and say-, to wit; that he is petitioner in the above entitled cause, that he verily believes he has a good valid and sufficient cause of action, that he has no money or funds with which to pay the costs or fees to prosecute his cause, that he has no property or other assets with which to pay the said costs and fees; that he verily believes he is entitled to the relief he seeks, the same being a writ of Habeas Corpus to affect his release from his imprisonment, that his foregoing statements are true and correct and that he is ready and willing to verify the same.

Lee Van Woods, Affiant.

Subscribed and sworn to before me on this 6th day of September A. D. 1945. James A. Denny, Notary Public. (Seal.)

[fol. 5] IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Comes now, Lee Van Woods, petitioner in the above entitled cause and respectfully moves the Court that because of his poverty that he be permitted to prosecute his cause of action as a poor person, as provided in the laws of Illinois, Ill. Rev. Stat. 1941, Ch. 33, Par. 5, without the payment of costs or fees.

It is further moved that the Court order the usual and necessary process that may be needed to issue, as provided by the laws of Illinois, Ill. Rev. Stat. 1941, Ch. 33, Par. 6, without payment of costs or fees.

Respectfully Submitted, Lee Van Woods, Petitioner, Pro. Se.

Lee Van Woods, Petition Reg. No. 17295, Illinois State Penitentiary, Menard, Illinois.

[fol. 6] IN THE CRIMINAL COURT OF COOK COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS, ex Rel. LEE VAN WOODS, Petitioner

vs.

WALTER NIERSTHEIMER, Warden, Illinois State Penitentiary, Menard, Illinois

PETITION FOR THE WRIT OF HABEAS CORPUS—Filed October 10, 1945

Comes now, Lee Van Woods, petitioner in the above entitled cause, and respectfully represents unto the Court, that:

1. The action arises under the Constitution of the United States, an action to redress the deprivation of his right to due process of law as guaranteed by Section 1 of the Fourteenth Amendment thereto, an action within the jurisdiction of the Court as given by the Constitution of Illinois, Article VI, Section 26; an action within the statutory powers and jurisdiction given to the Court by the Laws of Illinois, Ill. Rev. Stat. 1941, Ch. 37, Par. 166, 167; an action within the provision of Section 2; of the Habeas Corpus Act, Ill. Rev. Stat. 1941, Ch. 65, Par. 2, as an application to a Court of Competent Jurisdiction of the County from which the petitioner was committed.

2. The petitioner is imprisoned in Illinois State Penitentiary at Menard, Illinois, by the respondent Walter Nierstheimer, Warden of the said institution.

3. The cause or pretense of his imprisonment is an order of commitment issue by the Criminal Court of Cook County, Illinois, in the case entitled People v. Woods, Gen. No. 40-463, of said Court wherein the petitioner purportedly [fol. 7] made a free and voluntary confession to the crime of murder, had competent counsel appointed for him, and entered a free and voluntary plea of guilty to the crime of murder and the judgment of the Court sentenced him to the Illinois State Penitentiary for the term of 99 years. Copy of the said order hereto attached, marked Exhibit "A" reference made a part hereof.

4. The true and correct facts *regarding the petitioner free and voluntary confession, the appointment of competent counsel for the petitioner and his free and voluntary plea of guilty, and his arrest is as follows:*

That on or about March 8 or 9, 1940, the Chicago Police came to the petitioner place of residence and put the petitioner under arrest. The police took the petitioner into his bed-room and put revolver to the petitioner head, beating the petitioner and telling the petitioner if he moved they the police would blow his brains out. In answer to the petitioner inquiries as to why he was being treated that way, they the Police, then accused the petitioner of the crime of murder, the police kept asking him what he did with the gun.

A search was made of the petitioner room and several guns were found which belonged to the petitioner. Upon the finding of the guns the police began beating the petitioner trying to make him confess, this the petitioner refused to do, then the petitioner was told that he would confess before they the police got through with him.

The petitioner was taking from his residence and put into a police car and was taken to the police station, while on the way there, the police put lighted cigarettes in petitioner face, demanding from him "Are you going to talk nigger." The police in charge of the officers who was later learned by the petitioner, to be a Sergeant Bob Hornett. The petitioner arrived at the station, name and location unknown, about 12:00 noon, the petitioner was [fol. 8] steadily questioned and beatin until 7:30 P. M. being told that he killed him and that the petitioner better confess, when it was learned that the petition would not confess, the petitioner was put into a cell and as often as he tried to recuperate from the beatings the petitioner was called for more questioning.

The following morning the petifioner was given a cup of coffee and a doughnut and was told that he would not get anything more to eat nor any tobbacco until the petitioner confessed. The petitioner was beatgn some more at this station and then taken the 48th Street Station, where he was again beaten and questioned until about 2:00 P. M. At all times the petitioner protested his innocence of the charges which the police were trying to make him confess too.

Sometime that afternoon the petitioner was taken to the Stanton Avenue Station where the police took him in the basement and handcuffed the petitioner to a pipe on the ceiling, beated the petitioner with blackjacks, clubs and hands. The officer in charge of the police at the time of the arrest, was Sergeant Bob Hornett, also this Sergeant Hornett was there most of the time supervising the treatment. The questioning and beatings was continued for two days then the petitioner was taken and put in a line up for identification. Witnesses were brought and upon the insistence of the police that the petitioner was the man and upon the petitioner pleas to one witness that this witness be fair this witness said he did not know for sure but that the petitioner might be the man.

Then the petitioner was taken to the office of the station where a person in civilian clothes questioned him, the petitioner at all times protested his innocence. The petitioner was taken out of this office and while the petitioner was leaving he heard this person tell the police to get a confession.

[fol. 9] About the fourth day after petitioner arrest he was taken the the States Attorneys office at 26th Street and California when the petitioner was told to sign some papers. The petitioner was attempting to read these papers, when Sergeant Hornett began beatings again telling the petitioner to sign them or he would finish the job of killing the petitioner. The petitioner could not stand any more beatings so the petitioner signed the papers which later learned was a confession.

The petitioner was then taken before a judge and bound over to the grand jury.

On March 14, 1940, the grand jury returned the indictment, Gen. No. 40-463, charging the petitioner with the murder of Stephen Broscoe on March 6, 1940, George Jones being impleaded with the petitioner. On March 15, 1940, the petitioner was taken before the Chief Justice of the Criminal Court, Judge John Prystalski; who appointed the Public Defender as counsel for the petitioner in the trial of the cause and assigned the cause to Judge William J. Lindsay. The petitioner was then returned to the County Jail, the Public Defender never came to consult with the petitioner in regards to the facts of the crime charged against the petitioner.

On May 20, 1940, the petitioner was taken to the Court room bull-pen to await his trial while there a colored man came to see the petitioner telling him that he was the petitioner lawyer and had been appointed to defend the petitioner. The petitioner was told by this lawyer that everything was fixed. The counsel would not listen to the facts and matters concerning the treatment the petitioner received by the police, the counsel kept saying that the petitioner should let him handle it as he was a lawyer and knew what he was doing and that he the lawyer would handle everything.

From the evidence given at the trial the petitioner first learned that he was supposed to have shot Stephen Broscoe [fol. 10] about 6:35 P. M. the night of March 6, 1940. The petitioner tried to tell the judge that the petitioner did not know anything of the crime, but the petitioner counsel pulled him back into his seat and told the petitioner that he had pleaded guilty, that if the petitioner did not keep his mouth shut he would go to the electric chair, the States attorney also saying if the petitioner don't keep his mouth shut he will burn. At no time did the petitioner counsel object to the proceedings in the Court, examine the witnesses, nor put forth any evidence for the petitioner defense, at the close of the States evidence, the Petitioner counsel told the Court, that the petitioner was guilty and, should receive a prison sentence which should keep the petitioner in prison for the rest of petitioner life, a sentence of ninety-nine (99) years being imposed on May 21, 1940.

At the time of the crime which the petitioner was charged with the petitioner could have proven that he was at a friend house from where he went to his own place of residence at 4733 Michigan Ave., Chicago, Illinois, here the petitioner played cards with others and from there the petitioner called up other friends. This was told to the counsel on the day of the petitioner trial, but petitioner lawyer said due to the confession which was signed in the States Attorneys office, he the counsel could not get the witnesses and the only a plea of guilty could be had under the circumstances. At no time did the petitioner authorized the Public Defender to enter a plea of guilty or enter such a plea himself, at all times the petitioner pleaded not guilty and protested his innocence of the crime charged.

At the time of the trial the petitioner was a pauper without sufficient funds or means to employ counsel to

defend him and was under the circumstances compelled to accept the service of the Public Defender; The petitioner [fol. 11] was twenty-two years of age and a public school graduate without any legal knowledge, and was a user of marijuana which left the petitioner sick and nervous and living in a world of fog and after the petitioner was in prison a long time which is five years, Legal knowledge was made available.

The petitioner have study for the last nine months and have learned that he had been deprived of his rights by the officers of the Court.

(A)

The purported free and voluntary confession which was obtained from him was obtained by the use of copious beatings by the Chicago Police which intimidated and coerced him into signing the confession after he had lost his powers of physical and mental resistance.

(B)

The Public Defender of Cook County, Illinois, who had been appointed to represent him because of his poverty, did not consult with him in regards to the facts of the case at no time prior to the date of the trial, and when told the facts by which the confession had been obtained refused to consider them, telling the petitioner herein that he was guilty, that no defense could be had because of the confession, that a plea of guilty was the only plea he could enter under the circumstances and that he was going to withdraw the petitioner plea of not guilty and enter a plea of guilty.

(C)

The petitioner's plea of not guilty was withdrawn and a plead of guilty entered over his protests and when he attempted to tell the Court of the actions taken the States Attorney and Public Defender both threatened him with a sentence to the electric chair if he did not maintain his silence.

[fol. 12] 5. That the order of judgment entered by the Criminal Court of Cook County, Illinois, as set forth in paragraph 3, is not an order of a Court of competent jurisdiction because of the following matters.

(A)

The use of duress, intimidation and coercion to obtain the confession of the petitioner to the crime he was charged with was without due process of law, or any process of law, in violation of his right as guaranteed by the Constitution of the United States and particularly by Section 1 of the Fourteenth Amendment thereto, which he here and now pleads and relies upon to obtain redress for the wrong done him.

(B)

The actions of the Public Defender, in failing to consult with the petitioner prior to the trial to prepare a defense and put the true facts before the Court deprived him of his right to the assistance of competent counsel and the usual and accustomed incidenticals of consultation and preparation without due process of law, or any process of law in violation of his right as guaranteed by the Constitution of the United States and particularly by Section 1 of the Fourteenth Amendment thereto, which he here and now pleads and relies upon to obtain redress for the wrong done him.

(C)

The *actions of the officers of the Court* in withdrawing the petitioner plea *of not guilty and entering a plea of guilty* over his protests, and *subsequently using duress*, intimidation and coercion to cause him to maintain *his silence*, deprived him of his right to a fair and impartial trial *without due* process of law, or any process of law in violation of his *right* as guaranteed by the Constitution of the United States, and *particularly* Section 1 of the Fourteenth Amendment thereto, which he here *and now* pleads and relies upon to obtain redress for the wrong done him.

[fol. 13] 6. That the said respondent hold illegally in custody said petitioner under the said void, null and unconstitutional order, set forth in paragraph 3, and therefore said petitioner is entitled to his discharge from custody under said order.

7. That the said order is not an order, process, judgment or decree specified in Section 21 of the Habeas Corpus Act, Ill. Rev. Stat. 1941, Ch. 65, par. 21.

8. To be released from which said imprisonment your petitioner now applies, praying that a writ of habeas corpus, to be directed to the said Walter Nierstheimer, Warden, Illinois State Penitentiary at Menard, Illinois, may issue in this behalf pursuant to the statutes in such case made and provided, so that your petitioner may be forthwith brought before this Court to do submit to and receive what the Constitution of the United States may require in that behalf.

Respectfully Submitted, Lee Van Woods, Petitioner Pro Se.

[fol. 14] *Duly sworn to by Lee Van Woods. Jurat omitted in printing.*

[File endorsement omitted.]

[fols. 15-16] EXHIBIT "A" TO PETITION

Penitentiary Mittimus.—Criminal Court of Cook County.

Form 43A

UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

Pleas, before a Branch of the Criminal Court of Cook County, in said County and State, at a term thereof begun and held at the Criminal Court House, in the City of Chicago, in said County, on the first Monday (being the sixth day) of May, in the year of our Lord one thousand nine hundred and forty and of the Independence of the United States the one hundred and sixty fourth.

Present: Honorable William J. Lindsay, Judge of the Superior Court of Cook County and Ex-Officio Judge of the Criminal Court of Cook County.

Thomas J. Courtney, State's Attorney. Thomas J. O'Brien, Sheriff of Cook County.

Attest: Thomas J. Bowler, Clerk.

Be It Remembered, to-wit: On the twenty first day of May in the year last aforesaid, it being the term of Court

aforesaid, the following, among other proceedings, were had and entered of record in said Court, which said proceedings are in the words and figures following, to-wit:

No. 40-463

THE PEOPLE OF THE STATE OF ILLINOIS,

vs.

LEE VAN WOODS (Impleaded)

INDICTMENT FOR MURDER

This day come the said People, by Thomas J. Courtney, State's Attorney, and the said Defendant as well in his own proper person as by his Counsel also comes, and now neither the said Defendant nor his Counsel for him saying anything further why the judgment of the Court should not now be pronounced against him on the plea and judgment of guilty, heretofore renedred to the indictment in this cause.

Therefore, it is considered, ordered and adjudged by the Court that the said Defendant Lee Van Woods is guilty of the said crime of Murder in manner and form as charged in the indictment in this cause, and the said plea and judgment of guilty, and that he be and is hereby sentenced to confinement at hard labor in the Illinois State Penitentiary for said crime of Murder in manner and form as charged in the indictment whereof he stands convicted and adjudged guilty, for the term of ninety-nine (99) years from and after the delivery of the body of said Defendant Lee Van Woods to the Illinois State Penitentiary and that the said Defendant Lee Van Woods be taken from the bar of the Court to the Common Jail of Cook County, from whence he came and from thence by the Sheriff of Cook County to the Department of Public Welfare and the said Department of Public Welfare is hereby required and commanded to take the body of the said Defendant Lee Van Woods and confine him in said Penitentiary, in safe and secure custody, for and during the term of ninety-nine (99) years from and after the delivery thereof, at hard labor, and that he be thereafter discharged.

It Is Further Ordered that the said Defendant pay all the costs of these proceedings, and that execution issue therefor.

STATE OF ILLINOIS,
County of Cook, ss:

I, Thomas J. Bowler, Clerk of the Criminal Court of Cook County, in said County and State, do hereby certify the above and foregoing to be a true, perfect and complete copy of an order entered of Record in said Court, in the Case of The People of the State of Illinois, versus Lee Van Woods.

Witness, Thomas J. Bowler, Clerk of said Court, and the Seal thereof, at Chicago, in said County, this twenty second day of May A. D., 1940.

To the Sheriff of Cook County to Execute.

Thomas J. Bowler, Clerk. (Seal.)

[fol. 17] IN THE CRIMINAL COURT OF COOK COUNTY

[Title omitted]

MOTION TO DISMISS—Filed October 24, 1945

Now comes Walter Niersteheimer, Warden of the Illinois State Penitentiary, Menard, Illinois, respondent herein, by George F. Barrett, Attorney General of the State of Illinois, and William J. Tuohy, State's Attorney of Cook County, Illinois, his attorneys, and moves the Court to dismiss the petition for a Writ of Habeas Corpus, heretofore issued herein, for failing to state a cause of action on the face of said petition, and alleges:

That it appears upon the face of said petition that the relator, Lee Van Woods, is in his custody by and under the authority of a judgment of conviction rendered by the Criminal Court of Cook County, Illinois; that said judgment has not been satisfied; that when the Criminal Court of Cook County rendered judgment against the relator it had full jurisdiction of the subject matter of said cause, of the person of the relator and power to render the judg-
[fol. 18] ment it did render against the relator.

Wherefore, this respondent prays that the said petition be dismissed.

Walter Nierstheimer, Warden of the Illinois State Penitentiary, Menard, Illinois, by George F. Barrett, Attorney General of the State of Illinois, by William J. Tuohy, State's Attorney of Cook County, James V. Cunningham, Assistant State's Attorney.

[File endorsement omitted.]

[fol. 19] In Criminal Court of Cook County

Order Dismissing Petition—October 24, 1945

And the Court hearing Counsel for said Respondent in support of said motion as well as in opposition thereto and being fully advised in the premises, doth sustain said motion and orders that the Petition in this cause be and the same is hereby dismissed out of this Court.

[fol. 20] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 21] Judge's and Clerk's Certificate omitted in printing.

[fol. 22] Supreme Court of the United States

Order Granting Motion for Leave to Proceed in Forma Pauperis—February 25, 1946

On consideration of the motion for leave to proceed *in forma pauperis* in this case.

It is ordered by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice Jackson took no part in the consideration or decision of this motion.

[fol. 23] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 25, 1946

The petition herein for a writ of certiorari to the Criminal Court of Cook County, State of Illinois, is granted and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

Endorsed on Cover: Enter petitioner pro se. In forma pauperis. File No. 50,374. Illinois, Criminal Court, Cook County. Term No. 671. Lee Van Woods, Petitioner, vs. Walter Nierstheimer, Warden, Illinois State Penitentiary, Menard, Illinois. Petition for a writ of certiorari and exhibit thereto. Filed December 15, 1945. Term No. 671 O. T. 1945.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 631

LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, WARDEN, ILLINOIS STATE PENITENTIARY, MENARD, ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF RANDOLPH COUNTY

No. 671

LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, WARDEN, ILLINOIS STATE PENITENTIARY, MENARD, ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY

BRIEF FOR PETITIONER

EDWARD H. LEVI,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Opinions below	2
Jurisdiction	2
Questions presented	2
Constitutional provisions involved	3
Statement	3
Specification of errors	7
Argument	8
1. The petitions for the writ of habeas corpus sufficiently allege facts showing that petitioner has been denied due process within the meaning of the Fourteenth Amendment	8
2. The motion in the nature of the writ of error coram nobis does not lie because the statute of limitations has run	11
3. It was the duty of the courts below to grant relief under the writs of habeas corpus	14
Conclusion	17
Appendix	18
Letter of Clerk, Circuit Court of Randolph County	18
Illinois Coram Nobis Statute (Section 196—Chapter 110—Illinois Revised Statutes 1945)	18
Illinois Habeas Corpus Act (Chapter 65—Illinois Revised Statutes 1945)	19

Citations

Cases:

Cook v. *Wood*, 24 Ill. 295 (1860)	13
Doss v. *Lindsley*, 43 Fed. Supp. 427, 431 (D. C. Ill., 1944)	15
Hammond v. *People*, 32 Ill. 446 (1863)	9
Harris v. *People*, 128 Ill. 585, 21 N. E. 563 (1869)	14
Hawk v. *Olson*, 66 Sup. Ct. 116 (1945)	10
House v. *Mayo*, 324 U. S. 42 (1945)	10

Page

Johnson v. *Zerbst*, 304 U. S. 458, 465 (1938) 14
Ex Parte Lange, 85 U. S. 163 (1873) 14
Mains v. *Cosner*, 67 Ill. 536, 537 (1873) 12
McKindley v. *Buck*, 43 Ill. 488 (1867) 13, 15
Mooney v. *Holohan*, 294 U. S. 103, 113 (1935) 16
Morhous v. *Supreme Court of New York*, 293 N. Y. 131, 135, 139, 140, 56 N. E. (2d) 79, 82, 84 (1944) 16
People v. *Bertrand*, 385 Ill. 289, 290, 291, 52 N. E. (2d) 706, 707 (1944) 15, 16
People v. *Bradley*, 60 Ill. 390, 391 (1871) 15
People v. *Crooks*, 326 Ill. 266 (1927) 12
People v. *Dabbs*, 372 Ill. 166, 23 N. E. (2d) 343, 346 (1939) 12
People ex rel. Barret v. *Bradly*, 391 Ill. 169, 62 N. E. (2d) 788 (1945) 15
People ex rel. Brendage v. *La Buy*, 285 Ill. 141, 120 N. E. 537 (1918) 13
People ex rel. Joyce v. *Strassheim*, 242 Ill. 359, 90 N. E. 118 (1909) 14
People ex rel. Lucey v. *Turney*, 273 Ill. 546, 553, 113 N. E. 105, 108 (1916) 13
People ex rel. Lyons v. *Hanchett*, 16 Chicago Legal News 320 (1884) 14
People ex rel. Maglori v. *Siman*, 284 Ill. 28, 119 N. E. 940 (1918) 2, 14, 15
People ex rel. Ross v. *Ragen*, 391 Ill. 419, 420-422, 63 N. E. (2d) 874, 874-875 (1945) 17
People ex rel. Swanson v. *Fisher*, 340 Ill. 250 (1930) 14
People ex rel. Swanson v. *Williams*, 352 Ill. 435, 444, 65 N. E. (2d) 23, 27-28 (1946) 13
People ex rel. Swolley v. *Ragen*, 390 Ill. 106, 61 N. E. (2d) 248 (1945) 15
People ex rel. Wakefield v. *Montgomery*, 365 Ill. 478, 6 N. E. (2d) 868 (1937) 14
People v. *Hoffman*, 379 Ill. 318 (1942) 14
People v. *Parcora*, 358 Ill. 448, 193 N. E. 477 (1934) 11
People v. *Rave*, 392 Ill. 435, 444, 65 N. E. (2d) N. E. 23, 27-28 (1946) 12
People v. *Sprague*, 371 Ill. 627, 629, 21 N. E. (2d) 763, 764 (1939) 12

Page
People v. *Thon*, 374 Ill. 624, 30 N. E. (2d) 54 (1940) 11
People v. *Williams*, 293 Ill. App. 92 (1937) 11
Smith v. *O'Grady*, 312 U. S. 329 (1941) 16
Tomkins v. *Missouri*, 323 U. S. 485 (1945) 10
Toledo, Peoria & Western R. R. v. *Brown*, 375 Ill. 438 31 N. E. (2d) 767 (1941) 16
United States ex rel. Freislinger v. *Smith*, 41 F. (2d) 707 (1930) (C. C. A. 7) 14
United States v. *Howe*, 280 Fed. 815, 820 (C. C. A. (2d) 1922) 13
United States ex rel. Hall v. *Ragen*, 60 Fed. Supp. 820, 824 (1945) 16
Whitman v. *Wilson*, 318 U. S. 688 (1943) 15
White v. *Ragen*, 324 U. S. 760 (1945) 2, 10

Constitutional Provisions Cited:

14th Amendment—United States Constitution 3
Section 2, Article Two—Illinois Constitution of 1870 16
Section 7, Article Two—Illinois Constitution of 1870 15
Section 13, Article Eight—Illinois Constitution of 1818 15

Statutes Cited:

Section 237B—United States Judicial Code 2
Section 2, Chapter 65—Illinois Revised Statutes, 1945 3
Section 196, Chapter 110—Illinois Revised Statutes, 1945 12
Section 165-A, Chapter 37—Illinois Revised Statutes, 1945 13
Section 5, Article Two—Illinois Constitution of 1870 16
Section 9, Article Two—Illinois Constitution of 1870 16
Section 19, Article Two—Illinois Constitution of 1870 16
Section 25-(70A), Chapter 110—Illinois Revised Statutes (1945) 16
Section 730, Chapter 38—Illinois Revised Statutes (1945) 17

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 631

LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, WARDEN, ILLINOIS STATE PENITENTIARY, MENARD, ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF RANDOLPH COUNTY

No. 671

LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, WARDEN, ILLINOIS STATE PENITENTIARY, MENARD, ILLINOIS,

Respondent

ON WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY

BRIEF FOR PETITIONER

These cases are before the Court on writs of certiorari. In No. 631, the writ of certiorari was granted to review a decision of the Circuit Court of Randolph County denying the petition for writ of habeas corpus. In No. 671 the writ

of certiorari was granted to review a decision of the Criminal Court of Cook County dismissing the petition for the writ of habeas corpus. This brief is filed for both cases. The facts alleged in both petitions for writs of habeas corpus are identical.

Opinions Below

Neither court below rendered any opinion. The order of the Circuit Court of Randolph County reads, "Petition for Writ of habeas corpus denied for want of jurisdiction and failure to state a cause of action." (R.* 11) [1]

Jurisdiction

The judgment of the Circuit Court of Randolph County was entered on October 2, 1945. The petition for writ of certiorari was filed on November 30, 1945, and granted on February 25, 1946. The judgment of the Criminal Court of Cook County was entered on October 24, 1945. The petition for writ of certiorari was filed on December 15, 1945, and granted on February 25, 1946. The jurisdiction of this Court is invoked under Sec. 237(b) of the Judicial Code.[2]

Questions Presented

The questions presented are (1) whether the allegations of the petitions for writs of habeas corpus are sufficient to show that the petitioner has been deprived of his liberty without due process of law; (2) whether a non-Federal ground, namely, as the respondent contends, the availability of the motion in the nature of the writ of error *coram*

---

[1] Citations to the record in No. 631 are marked with an asterisk.

[2] In Illinois, the denial of habeas corpus is not reviewable by the Illinois Supreme Court and accordingly certiorari lies to the Circuit Court of Randolph County and to the Criminal Court of Cook County. *People* v. *Siman*, 284 Ill. 28 (1918), *Hammond* v. *The People*, 32 Ill. 446 (1863). See *White* v. *Ragen*, 324 U. S. 760, 767 (1945).

nobis, adequately supports the denial of relief by the courts below in view of the fact that the statute of limitations on *coram nobis* has run; and (3) whether it was not the duty of the courts below to grant relief under the writ of habeas corpus because the allegations of the petitions for writs of habeas corpus are sufficient to show that the petitioner has been deprived of his liberty without due process of law, and the sentence was therefore void.

Constitutional Provision Involved

Section 1 of the Fourteenth Amendment to the Constitution provides, so far as is material here:

> "• • • nor shall any State deprive any person of life, liberty, or property, without due process of law • • •"

Statement

Petitioner Lee Van Woods filed two petitions for writs of habeas corpus in October, 1945. One of these petitions was filed in the Circuit Court of Randolph County on October 2, 1945.[3] (Appendix A.) Randolph County is the county in which te petitioner is imprisoned. The other petition was filed in the Criminal Court of Cook County on October 10, 1945 (R. 1). Cook County is the county from which the prisoner was sentenced.[4]

The petitions for the writ of habeas corpus alleged identical facts.

On or about March 8th or 9th, the Chicago police came to the petitioner's place of residence and put the petitioner under arrest. "The police took the petitioner into his bedroom and put revolver to the petitioner head, beating the

[3] Leave to sue as a poor person was filed on September 25th, 1945 (R•1).

[4] Thus the petitioner filed in the courts of the two countries permitted under the Illinois Habeas Corpus Act. See Ill. Stat. (1945) c. 65, § 2.

petitioner and telling the petitioner if he moved they the police would blow his brains out. In answer to the petitioner inquiries as to why he was being treated that way, they the police, then accused the petitioner of the crime of murder * * *" (R.* 4, R. 4).

The petitioner was then held and beaten by the police over a four day period (R.* 5, R. 5). "The petitioner was told that he would confess before they the police got through with him" (R.* 4, R. 4). He was taken to the "police station, while on the way there, the police put lighted cigarettes in petitioner face, demanding from him 'Are you going to talk nigger.'" "The petitioner arrived at the station, name and location unknown, about 12:00 noon, the petitioner was steadily questioned and beaten until 7:30 P. M. being told that he killed him and that the petitioner better confess, when it was learned that the petitioner would not confess, the petitioner was put into a cell and as often as he tried to recuperate from the beatings the petitioner was called for more questioning" (R.* 4, R. 4).

The following morning "the petitioner was beaten some more at this station and then taken to the 48 Street Station, where he was again beaten and questioned until about 2:00 P. M. At all times the petitioner protested his innocence of the charges which the police were trying to make him confess too" (R.* 4, R. 4).

"Sometime that afternoon the petitioner was taken to the Stanton Avenue Station where the police took him in the basement and handcuffed the petitioner to a pipe on the ceiling, beated the petitioner with blackjacks, clubs and hands. The officer in charge of the police at the time of the arrest, was Sergeant Bob Hornett, also this Sergeant Hornett was there most of the time supervising the treatment. The questioning and beatings was continued for two days then the petitioner was taken and put in a line up for

identification. Witnesses were brought and upon the insistence of the police that the petitioner was the man and upon the petitioner's pleas to one witness that this witness be fair this witness said he did not know for sure but that the petitioner might be the man.

Then the petitioner was taken to the office of the station where a person in civilian clothes questioned him, the petitioner at all times protested his innocence. The petitioner was taken out of this office and while the petitioner was leaving he heard this person tell the police to get a confession.

"About the fourth day after petitioner arrest he was taken to the *the* States Attorneys office at 26th Street and California when the petitioner was told to sign some papers. The petitioner was attempting to read these papers, when Sergeant Hornett began beatings again telling the petitioner to sign them or he would finish the job of killing the petitioner. The petitioner could not stand any more beatings so the petitioner signed the papers which later learned was a confession." (R.* 4-5, R. 5).

It was only after this confession and four days of beating that the petitioner was taken before a judge and bound over to the grand jury. (R.* 5, R. 5).

An indictment for murder was returned on March 14, 1940. (R.* 5, R. 5). On March 15, 1940, the Public Defender was appointed as counsel for the petitioner. (R.* 5, R. 5). But the Public Defender did not consult with the petitioner with regard to the facts of the crime charged against the petitioner, until May 20th, 1940 when "the petitioner was taken to the Court room bullpen to await his trial". (R.* 5, R. 6). "While there a colored man came to see the petitioner telling him that he was the petitioner lawyer and had been appointed to defend the petitioner. The petitioner was told by this lawyer that everything was

fixed. The counsel would not listen to the facts and matters concerning the treatment the petitioner received by the police, the counsel kept saying that the petitioner should let him handle it as he was a lawyer and knew what he was doing and that he the lawyer would handle everything.

"From the evidence given at the trial the petitioner first learned that he was supposed to have shot Stephen Broscoe (fol. 10) about 6:35 P. M. the night of March 6, 1940. The petitioner tried to tell the judge that the petitioner did not know anything of the crime, but the petitioner counsel pulled him back into his seat and told the petitioner that he had pleaded guilty, that if the petitioner did not keep his mouth shut he would go to the electric chair, the States attorney also saying if the petitioner don't keep his mouth shut he will burn. At no time did the petitioner counsel object to the proceedings in the Court, examine the witnesses, nor put forth any evidence for the petitioner defense, at the close of the States evidence, the Petitioner counsel told the Court, that the petitioner was guilty and should receive a prison sentence which should keep the petitioner in prison for the rest of petitioner life, a sentence of ninety-nine (99) years being imposed on May 21, 1940.

"At the time of the crime which the petitioner was charged with the petitioner could have proven that he was at a friend house from where he went to his own place of residence at 4733 Michigan Ave., Chicago, Illinois, here the petitioner played cards with others and from there the petitioner called up other friends. This was told to the counsel on the day of the petitioner trial, but petitioner lawyer said due to the confession which was signed in the States Attorneys office, he the counsel could not get the witnesses and that only a plea of guilty could be had under the circumstances. At no time did the petitioner authorize

the Public Defender to enter a plea of guilty or enter such a plea himself, at all times the petitioner pleaded not guilty and protested his innocence of the crime charged." (R.* 6, R. 6).

On May 21st, 1940, the Criminal Court of Cook County, without a jury trial and as though on a plea of guilty, adjudged the petitioner guilty of murder and sentenced him to 99 years imprisonment. (R.* 9-10, R. 10). The petitioner was twenty-two years old at the time. (R.* 6, R. 7).

The petition in the Circuit Court of Randolph County was denied without opinion on October 2, 1945 "for want of jurisdiction and failure to state a cause of action." (R.* 11). Petitioner filed his petition for a writ of certiorari in this Court on November 30th, 1945, accompanying this petition with a motion for leave to proceed in forma pauperis. On February 25, 1946, this Court granted the motion for leave to proceed in forma pauperis and also granted the certiorari petition. (R.* 11).

The petition in the Criminal Court of Cook County was dismissed on October 24, 1945. (R. 12) A motion to dismiss had been filed by the respondent on that day. (R. 11). Petitioner filed his petition for a writ of certiorari in this Court on December 15, 1945, accompanying this petition with a motion for leave to proceed in forma pauperis. On February 25, 1946, this Court granted the motion for leave to proceed in forma pauperis and also granted the certiorari petition. (R.*12-13).

On March 8, 1946, this Court appointed the undersigned as counsel for petitioner in these cases.

Specification of Errors to Be Urged

1. The Circuit Court of Randolph County erred in denying the petition for the writ of habeas corpus without requiring respondent to answer and without giving to petitioner an opportunity to prove his allegations.

2. The Criminal Court of Cook County erred in dismissing the petition for the writ of habeas corpus upon respondent's motion to dismiss and without requiring respondent to answer and without giving petitioner an opportunity to prove his allegations.

3. The Criminal Court of Cook County erred in not holding that since the motion to dismiss admits the well pleaded allegations of the petition, the petitioner was deprived of his liberty without due process of law in violation of the Fourteenth Amendment.

4. The Courts below erred in not holding that the petitions for writs of habeas corpus adequately stated a cause of action that the petitioner was deprived of his liberty without due process of law in violation of the Fourteenth Amendment by reason of a void conviction on a capital charge without the effective assistance of counsel and by reason of duress and coercion resulting in a forced and untrue confession and in a plea of guilty not authorized or made by the petitioner.

Argument

1. *The petitions for the writ of habeas corpus sufficiently allege facts showing that petitioner has been denied due process within the meaning of the Fourteenth Amendment.*

The petition for the writ of habeas corpus filed in the Circuit Court of Randolph County and the petition filed in the Criminal Court of Cook County allege identical facts. The petitioner was beaten by the police over a four day period in an effort to make him confess a murder he did not commit. During the first day "as often as he tried to recuperate from the beatings the petitioner was called for more questioning." (R. 4, R. 4). On the fourth day he was told that if he did not sign the papers which had

been prepared for him, he would be killed. (R.* 5, R. 5). Petitioner later discovered these papers constituted a confession.

Counsel appointed to represent the petitioner did not consult with him until the petitioner was taken to the courtroom bull pen awaiting trial and then, telling him that everything was fixed, refused to listen to the facts concerning the extorted confession and petitioner's innocence. (R.* 5, R. 6). In connection with petitioner's statement to his counsel that he was at a friend's house and then at his own residence during the time when the crime was committed, petitioner's counsel told him that "due to the confession which was signed in the State's Attorney's office, he the counsel could not get witnesses and that only a plea of guilty could be had under the circumstances." (R.* 6, R. 6). When the petitioner tried to tell the trial judge that the petitioner knew nothing about the crime, petitioner's counsel pulled him back into his seat, told him he had pleaded guilty, and that if he did not keep his mouth shut, he would go to the electric chair. The State's Attorney likewise threatened the petitioner with the electric chair if he did not maintain his silence. (R.* 6, R. 6). The petitioner had never authorized a withdrawal of his plea of not guilty. He did not plead guilty himself, nor did he authorize any such plea to be entered for him. (R.* 6, 7, R. 6, 7).

The adjudication that the petitioner was guilty of the crime of murder after a trial conducted in this manner is shocking to the universal sense of justice and offensive to the common and fundamental ideas of fairness and right. The defendant did not have the effective assistance of counsel. He was not permitted to call witnesses he maintains could have proven his innocence. The coercion of the beatings and the repeated and protracted questioning

which forced the confession permeated the trial. The Attorney General of Illinois agrees, in his brief in opposition to the petitions for certiorari, that the charges of the petitions for writs of habeas corpus are "Sufficient in substance to charge want of due process under this court's holdings." Brief for Respondent in Opposition to Certiorari, 1-2; *Hawk* v. *Olson*, 66 Sup. Ct. 116 (1945), *White* v. *Ragen*, 324 U. S. 760 (1945); *House* v. *Mayo*, 324 U. S. 42 (1945).

The substance of petitioner's claim is clear. *Tomkins* v. *Missouri*, 323 U. S. 485 (1945). The motion to dismiss the petition for the writ of habeas corpus filed in the Criminal Court of Cook County admits the substance of petitioner's claim. *Toledo, Peoria & Western Railroad* v. *Brown*, 375 Ill. 438, 31 N. E. 2d 767 (1941). The Circuit Court of Randolph County declined to issue the writ holding that there was a "Want of jurisdiction and failure to state a cause of action." (R. 11). It denied the petition the same day it was filed. (Appendix A.) In neither case was the respondent required to answer, in neither case was the petitioner given an opportunity to prove his allegations.

The position taken by respondent in the brief in opposition to certiorari is not that the petitions do not sufficiently allege a denial of due process. He admits that the allegations are sufficient in substance to charge a want of due process, but argues that Illinois affords a plain, speedy and adequate remedy by a statutory motion in the nature of a writ of error coram nobis. Brief for respondent in opposition to Certiorari, 2.

2. *The motion in the nature of the writ of error coram nobis does not lie because the statute of limitations has run.*

The statutory motion in the nature of the writ of error coram nobis is not available to the petitioner. The statute of limitations on that motion has run. The statutory limitations on that motion is that the motion must be made within five years from the date of the rendition of final judgment. Ill. Rev. Stat. (1945) c. 110, § 196 (Statute set forth as Appendix B to this brief). The statutory period in this case expired in June, 1945. Petitioner was adjudged guilty and sentenced in the Criminal Court of Cook County on May 21, 1940 (R. 9-10, R. 9-10). He filed his petitions for habeas corpus on October 2, 1945 in the Circuit Court of Randolph County (R. 1-2 Appendix A) and on October 10, 1945, in the Criminal Court of Cook County (R. 1). At that time the time for the statutory motion of *coram nobis* had expired.

Coram nobis in Illinois is an unsure and uncertain remedy at best.[5] But the statutory limitation to a five year period "after the rendition of final judgment in the case" is clear. Ill. Rev. Stat. (1945) c. 110, § 196. The Illinois Supreme Court has stated: "Except for the correction of errors of fact, as provided by statute, within five years after final judgment, the court has no power to vacate a judgment of conviction after a defendant has commenced his sentence and after the end of the term of court at which he was convicted * * * A motion for the correction of errors of fact must be presented within five years of the rendition of the judgment. (Ill. Rev. Stat. 1937, chap. 110, par. 196,

[5] It is said not to apply, for example, where the error alleged is the error of the judge or an error of law. See *People* v. *Thon*, 374 Ill. 624, 30 N. E. 2d 54 (1940); *People* v. *Williams*, 293 Ill. App. 92 (1937); *People* v. *Parcora*, 358 Ill. 448, 193 N. E. 477 (1934).

p. 2406.)" *People* v. *Sprague*, 371 Ill. 627, 629, 21 N. E. 2d 763, 764 (1939); see also *People* v. *Dabbs*, 372 Ill. 166, 166, 23 N. E. 2d 343, 346 (1939).

The statutory period for *coram nobis* can be extended only "when the person entitled to make such motion shall be an infant, *non compos mentis*, or under duress, at the time of passing judgment." In that event "the time of such disability shall be excluded from the computation of said five years." Ill. Rev. Stat. (1945) c. 110, § 196. Petitioner is afforded no relief from the statutory limitation by this provision. The Illinois Supreme Court has recently held that confinement to the penitentiary under a sentence of life imprisonment would not stop the running of the statute. "It is a matter of common knowledge that writs of error and writs of habeas corpus are filed on behalf of persons who are serving life sentences in the penitentiary, and in *People* v. *Crooks*, 326 Ill. 266, we said 'A motion for writ of error *coram nobis* may be heard after the defendant has been imprisoned and is serving his sentence, and the court may, upon a proper writ, have the defendant brought into court for such hearing, if necessary.' We do not believe that this constitutes duress within the meaning of said exception in the provision fixing the period of limitation at five years." *People* v. *Ravo*, 392 Ill. 435, 444, 65 N. E. 2d 23, 27-28 (1946).

The limitation period begins to run at the "rendition of final judgment." Ill. Rev. Stat. (1945) c. 110, § 196. Prior to July 1st, 1872, the effective date of this statute abolishing the common law writ of error *coram nobis* and substituting the motion, the Illinois Supreme Court had "strongly intimated that a motion made at a term subsequent to that at which judgment was rendered, could not be sustained, though made to correct errors in fact as upon writ of error *coram nobis*." *Mains* v. *Cosner*, 67 Ill. 536, 537

(1873). This strong intimation was given in *McKindley v. Buck*, 43 Ill. 488 (1867), which held that a writ of error *coram nobis* could not be brought to set aside a judgment after the term had expired at which the judgment was rendered. See *Cook v. Wood*, 24 Ill. 295 (1860). It was against this background that the common law writ was abolished and the statutory motion created. The limitation of five years after the rendition of final judgment was a limitation made in a grant of jurisdiction to the courts of jurisdiction previously denied under the common law writ. The judgment becomes final either at the end of the term of court or before that time when sentence has been entered upon. See *People ex rel. Swanson v. Williams*, 372 Ill. 227, 230, 185 N. E. 598, 599 (1933); *People ex rel. Armitage v. LaBuy*, 285 Ill. 141, 120 N. E. 537 (1918); *People ex rel. Lucey v. Turney*, 273 Ill. 546, 553, 113 N. E. 105, 108 (1916); cf. *United States v. Howe*, 280 Fed. 815, 820 (C. C. A. 2d, 1922).

In Illinois, by statute in effect when petitioner was convicted, the term of the Criminal Court of Cook County commences on the first Monday of every month, and the term continues until the first day of the succeeding term. Ill. Rev. Stat. (1945) c. 37, § 165 a. The limitation period for *coram nobis* begins at the rendition of final judgment, a time certainly not later than the end of the term. The petitioner was sentenced on May 21st, 1940 (R. 9-10, R. 9-10). The term ended in June 1940. Thus the five year period permitted by the *coram nobis* statute expired in June, 1945. Petitioner cannot claim that the period was tolled by reason of the duress of imprisonment. He was not an infant nor was he *non compos mentis* during his period of confinement. *Coram nobis* is closed to him.

3. *It was the duty of the courts below to grant relief under the writs of habeas corpus.*

The writ of habeas corpus lies in Illinois when the petitioner is confined by virtue of a judgment which is void and not merely erroneous.[6] A judgment is not merely erroneous but it is void when procedural due process has been denied or a basic constitutional right denied. *People ex rel. Joyce* v. *Strassheim*, 242 Ill. 359, 90 N. E. 118 (1909); *People ex rel. Maglori* v. *Siman*, 284 Ill. 28, 119 N. E. 940 (1918); cf. *Ex parte Lange*, 85 U. S. 163 (1873); *Johnson* v. *Zerbst*, 304 U. S. 458, 465 (1938). When, as is true in this case if the allegations in the petitions for habeas corpus are accepted, a trial violates the fundamental principles of fairness and right, the court loses its jurisdiction to render the judgment; its judgment is void. It is no less void than a judgment of conviction in violation of the constitutional right to jury trial. *Harris* v. *People*, 128 Ill. 585, 21 N. E. 563 (1869). "The substitution of the finding of the court," where the basic constitutional right to jury trial has been violated, "leaves the court as destitute of the power to sentence as if no step whatever had taken place, intervening the plea of not guilty and the sentence." *People ex rel. Lyons* v. *Hanchett*, 16 Chicago Legal News 320 (1884). See *People ex rel. Swanson* v. *Fisher*, 340 Ill. 250, 257 (1930) which now permits waiver of jury trial in Illinois, and *People* v. *Hofman*, 379 Ill. 318 (1942).

Denial of the relief below is only explainable upon the assumption that no basic constitutional right is involved because the allegations of the petitions for habeas corpus need not be believed, and petitioner need not be given an opportunity to prove them, nor even to compel an answer

[6] This is the problem in the indeterminate sentence cases. The *People ex rel. Wakefield* v. *Montgomery*, 365 Ill. 478, 6 N. E. 2d 868 (1937); *U. S. ex rel. Freislinger on behalf of Kapper* v. *Smith*, 41 F. 2d 707 (1930).

from respondent which puts the facts at issue. This is a denial of Federal due process.

Even if *coram nobis* were available but not the exclusive remedy, the petitions for writs of habeas corpus would be appropriate, and their denial without opinion would raise a Federal question unless some adequate non-Federal ground should appear. *New York ex rel. Whitman* v. *Wilson*, 318 U. S. 688 (1943). The State of Illinois has always recognized the remedy of habeas corpus. See *Doss* v. *Lindsley*, 53 F. Supp. 427, 431 (D. C. Ill., 1944). It did so at a time when the Illinois Supreme Court referred to the common law writ of error *coram nobis* as "an "old writ (which) has never been in use in this State, and it has fallen into desuetude even in England." *McKinley* v. *Buck*, 43 Ill. 488, 490 (1867). In Illinois the writ of habeas corpus is "a prerogative writ, great and efficacious in the protection of the citizen in one of the most essential of all his personal rights—his right to liberty." *People* v. *Bradley*, 60 Ill. 390, 391 (1871). Both the Illinois Constitution of 1870 and the first Constitution of Illinois provide for the writ. Ill. Const. (1870) art. 2, § 7; Ill. Const. (1818) art. 8, § 13. Habeas corpus reaches not only the court's jurisdiction to hear and determine but its final jurisdiction to render the particular judgment. *People ex rel. Maglori* v. *Siman*, 284 Ill. 28, 32, 119 N. E. 940, 942 (1918). The writ is available to raise questions which go to the very heart of petitioner's conviction. See *People ex rel. Barrett* v. *Bradley*, 391 Ill. 169, 62 N. E. 2d 788 (1945).

But in this case if habeas corpus does not lie, petitioner has no remedy whatsoever in the State courts.[7] *Coram nobis* is unavailable because the statute of limitations has run. There is no remedy in the writ of error. *People* v. *Bertrand*,

[7] He has no remedy by habeas corpus in the Illinois Supreme Court which "does not try questions of fact." *People ex rel. Swolley* v. *Ragen*, 390 Ill. 106, 107, 61 N. E. 2d 248 (1945).

385 Ill. 289, 290, 291, 52 N. E. 2d 706, 707 (1944); see *United States ex rel. Hall* v. *Ragen*, 60 F. Supp. 820, 824 (1945) Ill. Rev. Stat. (1945) c. 110, § 259.70a. There is no other remedy. To deny habeas corpus in this case is to assume that Illinois affords no corrective process for the violation of a basic constitutional right.

It cannot be assumed that Illinois affords no corrective process for one who is imprisoned under a judgment rendered in violation of rights protected by the Federal constitution. *Smith* v. *O'Grady*, 312 U. S. 329 (1941). "Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution." *Mooney* v. *Holohan*, 294 U. S. 103, 113 (1935). See *Morhous* v. *Supreme Court of New York*, 293 N. Y. 131, 135, 139, 140, 56 N. E. 2d 79, 82, 84 (1944). The assumption that Illinois provides no remedy is particularly untenable in view of its Constitution which provides in section 19 of the Bill of Rights: "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation: he ought to obtain, by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly, and without delay." Ill. Const. Art. 2, § 19.

Beyond this, the Illinois Constitution provides that "no person shall be deprived of life, liberty or property without due process of law." Ill. Const. art. 2, § 2; that the "right of trial by jury as heretofore enjoyed, shall remain inviolate." Ill. Const. art. 2, § 5, and that "in all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel • • • and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury." Ill. Const. art. 2, § 9 • • •" The Criminal Code provides that "every person charged with crime shall be allowed counsel

and when he shall state upon oath that he is unable to procure counsel, the court shall assign him competent counsel, who shall conduct his defense." Ill. Rev. Stat. (1945) c. 38, §730. See also *People ex rel. Ross* v. *Ragen*, 391 Ill. 419, 420-422, 63 N. E. 2d 874-75 (1945). Petitioner's allegations, which he has been given no opportunity to prove, assert that these rights have been denied him. It is unthinkable that the State has provided no remedy and no process through which petitioner may be heard. The Constitution of Illinois has provided that this must not be the case. It is the duty of the State to provide a remedy. The remedy provided by the State is the "great and efficacious" remedy of habeas corpus. It is available here and can only be denied by denying to petitioner the basic constitutional right to a fair trial.

Conclusion

The petitions for writs of habeas corpus admittedly are sufficient in substance to charge a want of Federal due process. The petitions were denied in the one case and dismissed in the other without any requirement that respondent answer and petitioner was not given an opportunity to prove his allegations. No indication of any non-Federal ground adequate to support the judgments of the courts below has been given. The courts below did not state any such ground. *Coram nobis* is not available since the statutory period within which that motion may be brought has expired. No other State remedy, other than habeas corpus, is available. The appropriate and only State remedy is habeas corpus.

It is submitted that the judgments below should be reversed and remanded.

Respectfully submitted,

EDWARD H. LEVI,
Counsel for Petitioner.

APPENDIX A

HAROLD HAHN
Circuit Clerk, Randolph County
Chester, Illinois

March 23, 1946.

Mr. Edward H. Levi,
The Law School,
The University of Chicago,
Chicago 37, Illinois.

Dear Sir:

In answer to your letter of March 20, concerning the case of Lee Van Woods, Writ of certiorari; this is to inform you that his case was filed in this office as of October 2, 1945, and also denied on that same date.

Hoping this is the information you desire, I am

Very truly yours,

Sd. HAROLD HAHN,
Circuit Clerk, Randolph County, Illinois.

APPENDIX B

Illinois Coram Nobis Statute

"The writ of error coram nobis is hereby abolished, and all errors in fact, committed in the proceedings of any court of record, and which, by the common law, could have been corrected by said writ, may be corrected by the court in which the error was committed, upon motion in writing, made at any time within five years after the rendition of final judgment in the case, upon reasonable notice. When the person entitled to make such motion shall be an infant, non compos mentis or under duress, at the time of passing judgment, the time of such disability shall be excluded from the computation of said five years." (Ch. 110, Par. 196, Ill. Rev. Stats., 1945.)

APPENDIX C

Illinois Habeas Corpus, Ill. Stat. 1945, c. 65

Para. 1. (Who may have writ, Section 1. Be it enacted by the People of the State of Illinois, represented in the General Asembly: That every person imprisoned or otherwise restrained of his liberty, except as herein otherwise provided, may prosecute a writ of habeas corpus in the manner provided in this Act, to obtain relief from such imprisonment or restraint, if it prove to be unlawful.

Para. 21. (No discharge, when.) Section 21. No person shall be discharged under the provisions of this Act, if he is in custody either——

1. By virtue of process by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or

2. By virtue of a final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree, unless the time during which such party may be legally detained has expired; or

3. For any treason, felony or other crime committed in any other State or Territory of the United States, for which such person ought, by the Constitution and laws of the United States, to be delivered up to the executive power of such State or Territory.

Para. 22. (Prisoner under process of court—Grounds for discharge.) Section 22. If it appear that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:

1. Where the court has exceeded the limit of the jurisdiction, either as to the matter, place, sum or person.

2. Where, though the original imprisonment was lawful, yet, by some act, omission or event which has subsequently taken place, the party has become entitled to his discharge.

3. Where the process is defective in some substantial form required by law.

4. Where the process, though in proper form, has been issued in a case or under circumstances where the law does not allow process or orders for imprisonment or arrest to issue.

5. Where, although in proper form, the process has been issued or executed by a person either unauthorized to issue or execute the same, or where the person having the custody of the prisoner under such process is not the person empowered by law to detain him.

6. Where the process appears to have been obtained by false pretense or bribery.

7. Where there is no general law, nor any judgment order or decree of a court to authorize the process if in a civil suit, nor any conviction, if in a criminal proceeding. No court or judge, on the return of a habeas corpus, shall, in any other matter, inquire into the legality or justice of a judgment or decree of a court legally constituted.

FILE COPY

SUPREME COURT OF THE UNITED STATES

October Term, 1945

No. 631

LEE VAN WOODS,

Petitioner

vs.

WALTER NIERSTHEIMER, Warden Illinois State Penitentiary, Menard, Illinois

Respondent

Writ of Certiorari to the Circuit Court of Randolph County

No. 671

LEE VAN WOODS,

Petitioner

vs.

WALTER NIERSTHEIMER, Warden Illinois State Penitentiary, Menard, Illinois

Respondent

Writ of Certiorari to the Circuit Court of Randolph County

SUPPLEMENTARY APPENDIX TO BRIEF FOR PETITIONER.

At the time of the filing of petitioner's brief, counsel for petitioner did not know that the record before this court in No. 63 Misc. Woods v. Nierstheimer, a motion for leave to file a petition for habeas corpus, contained references and correspondence attached by petitioner relating to a motion in the nature of an application for a writ of error coram nobis filed

The correspondence attached by petitioner to his motion in Woods v. Nierstheimer No. 63 Misc. purports to show that this petition for a writ of error coram nobis was denied on July 5, 1945. This denial of a coram nobis proceeding is not a part of the record in either No. 631 or No. 671.

In view of the fact, however, that references to this denial are contained in this Court's record of No. 63 Misc., counsel for petitioner wishes to inform the Court that he has examined the record in the coram nobis proceeding referred to and according to the record of the Criminal Court of Cook County, petitioner's petition for coram nobis was permitted to be filed on July 5, 1945 and was denied on July 5, 1945. No written motion or pleading was filed by the state and petitioner received no hearing as to the truth of his allegations.

The denial of the petition for coram nobis referred to does not change the position taken in petitioner's brief, nor is it asserted that this denial is a part of the record in No. 631 or No. 671.

Respectfully submitted,

Edward H. Levi
Counsel for Petitioner

Corrections in Petitioner's Brief

Page 3, footnote 4: "countries" should be "counties".

Page 14: citation for Harris v. People, 15th line of first paragraph should be 128 Ill. 585, 21 N.E. 563 (1889); similar change should be made in list of citations under index.

FILE COPY

Office - Supreme Court, U. S.
FILED
FEB 18 1946
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

Nos. 631 and 671.

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, Warden, Illinois State Penitentiary, Menard, Illinois,

Respondent.

BRIEF FOR RESPONDENT.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Respondent.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

CHAMPLIN-SHEALY COMPANY, CHICAGO 388

SUBJECT INDEX.

PAGE

Statement of the Case and of the Issues Presented.... 1-2

Argument:

I. Petitioner had an adequate and exclusively appropriate remedy by coram nobis. Therefore the court's decision rests upon a non-federal ground adequate to support it, and certiorari should be denied 3-9

II. The federal courts will not intervene where the petitioner has an adequate remedy under the state law 9-11

Conclusion 11

TABLE OF U. S. CASES CITED.

Ex Parte Botwinski, 314 U. S. 586..... 10

Ex Parte Hawk, 321 U. S. 114..... 10

House v. Mayo, 324 U. S. 42..... 2, 10

Tomkins v. Missouri, 324 U. S. 485 ..... 2, 11

White v. Ragen, 324 U. S. 760..... 2, 3

Williams v. Kaiser, 323 U. S. 471..... 11

TABLE OF ILLINOIS CASES CITED.

City of Chicago v. Nodeck, 202 Ill. 257..... 5

People v. Dabbs, 372 Ill. 160..... 7

People v. Drysch, 311 Ill. 342..... 5

People v. Green, 355 Ill. 468..... 4, 7

People v. McAnally, 221 Ill. 66..... 8

TABLE OF STATUTES CITED.

Chap. 110, par. 196, Ill. Rev. Stats. 1945..... 2, 3

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

Nos. 631 and 671.

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, Warden, Illinois State Penitentiary, Menard, Illinois,

Respondent.

BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE AND OF THE ISSUES PRESENTED.

This brief is filed in response to this court's specific request therefor.

The petitioner filed two petitions for writs of *habeas corpus*, in substance identical, one in the Circuit Court of Randolph County and one in the Criminal Court of Cook County. In both of these petitions he averred, by charges which we concede to be sufficient in substance to charge

want of due process under this court's holdings,* that he was arrested without probable cause, unlawfully searched; beaten into confessing a murder which he did not commit, assigned counsel who did not make any real effort to represent him, denied an opportunity to call witnesses who were available and whose testimony, if believed, would have exonerated him, and convicted upon a plea of guilty to which he did not knowingly consent.

Both the Circuit Court of Randolph County and the Criminal Court of Cook County denied relief by way of *habeas corpus*. In attempting to obey this court's teachings in *White* v. *Ragen*, 324 U. S. 760, petitioner has sought this court's writ of *certiorari* directly to the Circuit Court and the Criminal Court above mentioned.

But, as we demonstrate in the argument, Illinois affords a plain, speedy and adequate remedy, which it is not within the discretion of the Illinois courts to withhold upon proper pleading and proper proof of facts such as those averred by the petitioner, by a statutory motion in the nature of a writ of *coram nobis* (Ill. Rev. Stats. 1945, Ch. 110, par. 196). In the argument, we demonstrate that the distinction between *coram nobis* and *habeas corpus* is not one of mere nomenclature, that there are important and fundamental differences both in principle and in practical consequences between the two modes of relief, and that *coram nobis*, not *habeas corpus*, is the appropriate and exclusive remedy for the petitioner in this case.

Question Presented

Do the Illinois courts' decision rest upon an adequate non-federal ground that petitioner had a clear and adequate remedy in the nature of a writ of error *coram nobis*, which was exclusive of *habeas corpus*?

---

* *White* v. *Ragen*, 324 U. S. 760, *House* v. *Mayo*, 324 U. S. 42, *Tomkins* v. *Missouri*, 324 U. S. 485, and other recent cases.

ARGUMENT.

I.

Petitioner had an adequate and exclusively appropriate remedy by coram nobis. Therefore the court's decision rests upon a non-federal ground adequate to support it, and certiorari should be denied.

The applicable Illinois statute, which appears at Ch. 110, Par. 196, Ill. Rev. Stats., 1945*, quoted in the margin, abolishes the writ of error *coram nobis* and provides that all errors in fact committed in the proceedings of any court of record which formerly could have been corrected by such writ can now be corrected by the court committing the error upon motion in writing. The motion must be made within five years with certain exceptions, one of which is made for persons who are under duress, in which case the five years run from the time the duress ceases.

In *White* v. *Ragen*, 324 U. S. 760, the question whether the Illinois statutory substitute for *coram nobis* afforded a plain, speedy, adequate and exclusively appropriate remedy in cases like the present one, was presented and argued but not reached because *White* v. *Ragen* and the companion case of *Lutz* v. *Ragen* were original proceedings in the Supreme Court of Illinois, and this court took cognizance of the Illinois rule that the Illinois Supreme Court does

* "The writ of error *coram nobis* is hereby abolished, and all errors in fact, committed in the proceedings of any court of record, and which, by the common law, could have been corrected by said writ, may be corrected by the court in which the error was committed, upon motion in writing, made at any time within five years after the rendition of final judgment in the case, upon reasonable notice. When the person entitled to make such motion shall be an infant, non compos mentis or under duress, at the time of passing judgment, the time of such disability shall be excluded from the computation of said five years."

not entertain petitions obviously tendering controverted issues of fact, remitting petitioners in such cases to *habeas corpus* in state trial courts of general jurisdiction where *habeas corpus is appropriate at all.*

But in speaking of the respondent's (the warden's) contention in the *White* and *Lutz* cases that *habeas corpus*, even in the trial courts of general jurisdiction, would not have lain because *coram nobis* was the exclusively appropriate remedy, this court said:

> "* * * We do not reach the alternative argument, made by the Attorney General, that petitioners' remedy in the state courts is not habeas corpus, but the statutory substitute for the writ of error *coram nobis*, Ill. Civil Practice Act, § 72, Smith-Hurd Stats. c. 110, § 196, and that the two remedies are mutually exclusive."

This question, not reached in the *White* and *Lutz* cases, is the only question presented in the instant case. We submit that the considerations hereafter briefly developed clearly demonstrate that under the jurisprudence of Illinois, *coram nobis* is available to the petitioner in the instant case as an absolute matter of right and is the only remedy available, and that therefore *certiorari* should be denied.

The case of *People* v. *Green*, 355 Ill. 468, is precisely apposite. We respectfully bespeak attention to its teaching. A study of that case peremptorily disposes of any question as to the availability of the statutory proceeding called *coram nobis*. In that case, petitions had been filed under the *coram nobis* provision above quoted, setting forth that, to quote the language of the Supreme Court of Illinois at page 470, "the defendant was not represented by counsel" and that evidence could be produced showing that he was not guilty of the charge. In each of several cases involved, the trial court vacated the judgment and granted a retrial of petitioner. The Illinois

Supreme Court case, was not an appeal from the *coram nobis* judgment (although appeal is available, see *post*) but an original petition by the state for *mandamus* to compel expunction of the orders vacating the original judgments.

The Supreme Court of Illinois said at page 473:

> "A writ of error *coram nobis*, or a motion under the statute, is an appropriate remedy in criminal cases as well as civil and lies to set aside a conviction obtained by duress or fraud, or where by some excusable mistake or ignorance of the accused, or without negligence on his part, he has been deprived of a defense which he could have used at his trial, and which, if known by the court, would have prevented conviction. (*People* v. *Crooks, supra; Sanders* v. *State*, 85 Ind. 318, 44 Am. Rep. 29; *State* v. *Calhoun, supra;* 2 R. C. L. sec. 266; 18 L. R. A. 842, note; *People* v. *Perez*, 98 Pac. (Cal.) 870.) Since the judgment entered upon such proceeding is final and the proceeding is civil in its nature, either the State or the defendant is entitled to a review of the judgment of the court entered on such motion or petition."

This case plainly charts appropriate practice.*

Another case that is directly in point is *People* v. *Drysch*, 311 Ill. 342. It states very clearly and precisely that, in cases like the instant ones, relief by way of *coram nobis* is peculiarly appropriate.

In the *Drysch* case it was contended that certain witnesses testified perjuriously and fraudulently. **In the Drysch case, there was no showing that any public official was privy to the fraud upon the courts.** The petitioner in the *Drysch* case relied upon the case of *City of Chicago* v. *Nodeck*, 202 Ill. 257. In the *Nodeck* case **there was a show-**

---

* "In *People* v. *Crooks, supra*, it was held that the sufficiency of the motion or petition may be raised by demurrer, plea of *nullo est erratum*, by motion to dismiss, by pleading special matters in confession and avoidance, or by making an issue of fact by traversing the allegations. Such was likewise the holding of this court in *Harris* v. *Chicago House Wrecking Co., supra.*" *People* v. *Green*, 355 Ill. 468, at 475.

ing not only of fraud but of complicity on the part of counsel for one of the parties. The Supreme Court of Illinois, distinguishing the *Drysch* case from the *Nodeck* case upon grounds which are fatal to the petitioner in the instant cases, said at pages 348-349 (Emphasis supplied):

> "The defendant argues the proposition that where a verdict is obtained by the admitted perjury of a witness it may be ground for vacating the judgment even after the judgment term, citing *City of Chicago* v. *Nodeck*, 202 Ill. 257. It is held in that case that a court has power to vacate a judgment at any time after the expiration of the term where the court was without jurisdiction to enter the judgment, and also that where a judgment has been obtained through fraud, such fact constitutes a sufficient reason for vacating it after the term in which it was rendered. **The fraud, however, must be a fraud committed by one of the parties on the court and not the perjury of a witness.** In the case cited the fraud was the fraud of the City of Chicago, one of the parties to the suit. * * *"

In other words, the Illinois rule is that if *without the privy of any party to the suit*, a witness commits perjury, due process is not denied and neither *coram nobis* nor any other remedy is appropriate; for it is the purity of the tribunal and of public officers, not that of the witnesses who testified before it, that is required by due process. But if, as the petitioner charges is the fact in the instant cases, the imposition upon the court, either by the profferance of perjured testimony or the suppressing of truthful testimony, is accomplished by the *connivance of the parties*, the judgment may be vacated. Of course, the complicity of public officials acting on behalf of the state in denying petitioners an opportunity intelligently to plead to an indictment and to procure witnesses, constitutes a denial of due process. Therefore, under the holding of the *Drysch* case, *coram nobis* is available as a matter of right, and not as a matter of grace; and the court has no discretion to deny it.

Another case that is much in point is *People* v. *Dabbs*, 372 Ill. 160, holding that the statutory proceeding in the nature of *coram nobis* is available where the petitioner claims that "he was fraudulently deprived of his liberty by failure of the state's attorney to inform the court that Hughes was feebleminded, and therefore an incompetent witness against the defendant." Although the claim was held not to be supported by the evidence, the proceeding was regarded as appropriate. In other words, the *Dabbs* case (372 Ill. 160, *supra*) holds that unfair suppression of evidence affords a right to relief by *coram nobis*.

The distinctions between *coram nobis* and *habeas corpus* are important and substantial.

In the *first* place, the *coram nobis* proceeding must be instituted in the court wherein the judgment was rendered. This would mean that, in the instant case, the petitioner's charges, serious if true, would be tried in the venue where, at least presumably, the witnesses and counsel reside.

In the *second* place, the doctrine of *res judicata* attaches to the *coram nobis* proceeding **and an appeal lies from such judgment**, which is not the case with *habeas corpus*. This means that, under the *coram nobis* practice, either the petitioner or the state has a right to review by the Supreme Court of Illinois of the decision of the trial court. (*People* v. *Green*, 355 Ill. 468, already cited, recognizes the finality of judgments upon *coram nobis* by pointing out that the state might appeal from them.) But in Illinois, as at common law, the doctrine of *res judicata* does not apply to judgments refusing a writ of *habeas corpus*. Had either of the trial courts entertained the instant petitions and discharged the prisoner, the state would have had no appeal to or writ of error from the Supreme Court of Illinois. (*Mandamus*

would have been appropriate to expunge the order freeing the prisoner if the order were void, as distinct from erroneous, but not otherwise. But the important right to review for error, as distinct from invalidity, which is available to both parties on *coram nobis* is available to neither on *habeas corpus*.

In *People* v. *McAnally*, 221 Ill. 66, it is said of *habeas corpus* at page 68, that "an order in one proceeding before either a court or a judge thereof is not a final order from which an appeal or writ of error would lie and could not be pleaded as a bar to another or further proceeding." This means that, if Illinois is bound to afford the petitioner a remedy not by *coram nobis* but by *habeas corpus*, then it must afford him an infinite number of such remedies, for he has a right to file as many petitions for *habeas corpus* as he chooses, even in the same courts. *Every time that he makes his charges, they must be reinvestigated de novo by* subpoena of the presiding judge, all counsel, and all other witnesses.

It may be suggested that the petition in the instant case filed in the Criminal Court of Cook County could and should have been treated as a petition for writ of error *coram nobis*. But the petition had none of the fundamental or essential requisites of an application for release in the nature of *coram nobis*. It was directed against the warden, as respondent, and not filed in the cases in which the petitioner was convicted. This distinction is not merely a formal one. It did not contemplate the process or notice against the State of Illinois, as plaintiff, and against the State's Attorney's office, which is always necessary in *coram nobis*. *Coram nobis is a contention of the adversary* proceeding by the People of the State of Illinois and the respondent. *Habeas corpus* lies against any person who, as an individual, wrongfully imprisons the relator. The

circumstance that the respondent is frequently a public official and acts under the color of purported legal process, does not implead the People of the State of Illinois as parties to the controversy. It is doubtless for this reason, among others, that *res judicata* is not predictable of decisions in *habeas corpus* proceedings.

Needless to say, the application in Randolph County could not be treated as an application for *coram nobis;* for the court in that county was not the court in which the petitioner was convicted and in which the State had a right to be heard in opposition to his application.

Thus, the applications in the instant cases cannot be treated as constructively or in substance an application for *coram nobis.* And the question as to what requisites are sufficient to constitute a petition for *coram nobis* as distinct from an application for *habeas corpus,* are, of course, questions of state procedure and therefore of state, not federal, law.

The simple truth is—and this is decisive of the instant cases—that petitioner did not resort to the plain, simple, adequate and speedy remedy afforded by the statutory proceedings in the nature of *coram nobis.*

It will thus be seen that the distinction between *coram nobis* and *habeas corpus* is, in Illinois, one of substance and not one of mere form.

II.

The federal courts will not intervene where the petitioner has an adequate remedy under the state law.

It should be observed that, although the federal courts will usually forbear the issuance of a writ of *habeas corpus* at the behest of a state prisoner where he has an adequate

remedy under state law (*Ex Parte Hawk*, 321 U. S. 114), still, since *habeas corpus*, whether in a state or a federal court, is an original proceeding, this or any other federal court has jurisdiction, however sparingly it may be exercised, to entertain *habeas corpus* petitions where the ground alleged is an invasion of federal rights.

But where the petitioner seeks to review a decision of the state courts by *certiorari*, then, if the state court has refused the writ on the ground that some other state remedy is appropriate and available, such refusal by the state court rests upon an adequate non-federal ground and this court abstains from review not out of considerations of comity or judicial policy but **because of want of jurisdiction.** The want of jurisdiction proceeds from the absence of a federal question.

In *House* v. *Mayo*, 324 U. S. 42, this court specifically held that the federal court should have paid no attention to this court's denial of *certiorari* "where" as this court said at page 48, "the basis of the state court decision is that the particular remedy is not one allowed by state law, for in such a case this court **lacks jurisdiction to review the decision.**"

Ex Parte Botwinski, 314 U. S. 586 is controlling. We quote in full the text of the *per curiam* opinion:

> "It does not appear that petitioner has exhausted his state remedies by applying for a writ of error *coram nobis*. *State ex rel. Dowd* v. *Superior Court of La Porte County*, 36 N. E. 2d 765; *State ex rel. Kunkel* v. *Circuit Court of La Porte County*, 209 Ind. 682, 200 N. E. 614. The motion for leave to file a petition for writ of *habeas corpus* is therefore denied without prejudice. *Mooney* v. *Holohan*, 294 U. S. 103."

It thus appears that the petitioner has a plain, speedy and adequate remedy under the law of Illinois. That rem-

edy is exclusive. Therefore the judgments in the instant cases rest upon an adequate non-federal ground of decision.

It is not necessary that this ground be stated if it fairly appears from a study of the general jurisprudence of the state. In *Williams* v. *Kaiser*, 323 U. S. 471, and *Tomkins* v. *Missouri*, 324 U. S. 485, this court, going beyond the judgments under review, consulted and studied the statutes and decisions of Missouri in an effort to ascertain whether there were any relevant principles or rules of Missouri's jurisprudence which, even though such rules were not referred to in the opinions or the judgments, might fairly appear to support the judgments. It found no such statutes or rules in Missouri. But the Illinois statutes and the Illinois rules appear from the foregoing consideration.

Conclusion.

It is therefore respectfully submitted that these petitions for *certiorari* should be denied.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Respondent.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

Nos. 631 and 671.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, Warden, Illinois State Penitentiary, Menard, Illinois,

Respondent.

BRIEF FOR RESPONDENT FILED AFTER GRANTING OF CERTORARI AND IN RESPONSE TO PETITIONER'S BRIEF.

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Respondent.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

CHAMPLIN-SHEALY COMPANY, CHICAGO 365

INDEX AND SUMMARY OF ARGUMENT.

PAGE

Respondent's acceptance of petitioner's statement of the facts 1

Respondent's statement of the questions presented... 2

Argument:

I. Petitioner had an adequate and exclusively appropriate remedy by coram nobis..... 3

II. Due process is not denied by requiring petitioner to pursue his statutory remedy within five years 9

III. A state statute of limitations will be enforced even though the right asserted is a federal right 13

Conclusion 14

CITATIONS.

Cases:

Bongiorno v. Ragen, 54 F. Sup. 973..... 14

Campbell v. Haverhill, 155 U. S. 610..... 13

City of Chicago v. Nodeck, 202 Ill. 257..... 5

Gotto v. Lane, 265 U. S. 393..... 10

House v. Mayo, 324 U. S. 42..... 2, 11

Mooney v. Holohan, 294 U. S. 103..... 11

People v. Dabbs, 372 Ill. 160..... 7

People v. Drysch, 311 Ill. 342..... 5

People v. Green, 355 Ill. 468..... 4, 8

People v. McAnally, 221 Ill. 66..... 8

Riddle v. Dyche, 262 U. S. 333..... 10

Tomkins v. Missouri, 323 U. S. 485..... 2

White v. Ragen, 324 U. S. 760..... 2, 3, 4, 11

Authorities:

Constitution of the United States, Fourteenth Amendment..... 2

Illinois Revised Statutes, 1945, Ch. 110, Par. 196.... 3

Hughes Federal Practice Jurisdiction and Procedure, Sec. 3679..... 13

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945

Nos. 631 and 671.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. LEE VAN WOODS,

Petitioner,

vs.

WALTER NIERSTHEIMER, Warden, Illinois State Penitentiary, Menard, Illinois,

Respondent.

BRIEF FOR RESPONDENT FILED AFTER GRANTING OF CERTORARI AND IN RESPONSE TO PETITIONER'S BRIEF.

RESPONDENT'S ACCEPTANCE OF PETITIONER'S STATEMENT OF THE FACTS.

Counsel for the petitioner, with the fairness that is to be expected of a member of the bar whom this Court has selected to argue the prisoner's side of an important question in the domain of constitutional law and civil freedom, has accurately and fully stated the facts, which consist of the petitioner's undenied allegations.

The respondent concedes that petitioner's allegations charge, not as mere conclusions but with the specificity of detail requisite under the canons of pleading, that a confession was extorted from him by unlawful assaults com-

mitted by police officers, that counsel appointed by the court entered a plea of guilty on behalf of petitioner without petitioner's consent, that petitioner was denied an opportunity to summon witnesses who would have testified in his behalf and that petitioner did not have the means to employ other counsel. Respondent concedes that these allegations, although a trial of the issues which they tender would require an investigation of matters *dehors* the record, charge denial of due process of law under the Fourteenth Amendment if Illinois has failed to afford adequate procedure for petitioner's relief.*

But although respondent accepts petitioner's statement of the facts and concedes that such facts constitute denial of due process if Illinois has failed to provide an adequate remedy, respondent does not concur in petitioner's delineation of the questions of law presented. Respondent's conception of the questions presented to this Court in this case appears immediately below.

Respondent's Statement of the Questions Presented.

1. Was Illinois' statutory substitute for the writ of error *coram nobis* an adequate and the exclusive means of vindicating the constitutional rights which he asserts?

2. If Illinois afforded petitioner an adequate and exclusively appropriate means of vindicating his rights by statutory proceedings in the nature of *coram nobis*, could Illinois, compatibly with a proper construction of the Fourteenth Amendment, require petitioner to exhaust that means within the five-year period fixed by the statutory remedy in the nature of *coram nobis*?

---

* Cf. *White* v. *Ragen* 324 U. S. 760; *House* v. *Mayo*, 324 U. S. 42; *Tomkins* v. *Missouri*, 323 U. S. 485, and many other decisions of this court.

ARGUMENT.

A SUMMARY OF ARGUMENT APPEARS IN THE INDEX, ANTE, PAGE I.

I.

Petitioner had an adequate and exclusively appropriate remedy by coram nobis.

The applicable Illinois statute, which appears at Ch. 110, Par. 196, Ill. Rev. Stats., 1945*, quoted in the margin, abolishes the writ of error *coram nobis* and provides that all errors of fact committed in the proceedings of any court of record which formerly could have been corrected by such writ may now be corrected by the court committing the error upon motion in writing. The motion must be made within five years with certain exceptions, one of which is made for persons who are under duress, in which case the five years run from the time the duress ceases. The effect of this statutory period of limitation is considered under Point II, *post*.

In *White* v. *Ragen*, 324 U. S. 760, the question whether the Illinois statutory substitute for *coram nobis* afforded a plain, speedy, adequate and exclusively appropriate remedy in cases like the present one was presented and argued but not reached because, *White* v. *Ragen* and the companion case of *Lutz* v. *Ragen* being original proceedings in the Supreme Court of Illinois, this court took cognizance

* "The writ of error *coram nobis* is hereby abolished and all errors in fact, committed in the proceedings of any court of record, and which, by the common law, could have been corrected by said writ, may be corrected by the court in which the error was committed, upon motion in writing, made at any time within five years after the rendition of final judgment in the case, upon reasonable notice. When the person entitled to make such motion shall be an infant non compos mentis or under duress, at the time of passing judgment, the time of such disability shall be excluded from the computation of said five years."

of the Illinois rule that the Illinois Supreme Court does not entertain petitions obviously tendering controverted issues of fact but in such cases remits petitioners to remedy by *habeas corpus* in state trial courts of general jurisdiction *where habeas corpus is appropriate at all.*

But in speaking of the respondent's (the warden's) contention in the *White* and *Lutz* cases that *habeas corpus*, even if prayed in the trial courts of general jurisdiction, would not have lain because *coram nobis* was the exclusively appropriate remedy, this court said:

> "* * * We do not reach the alternative argument, made by the Attorney General, that petitioners' remedy in the state courts is not habeas corpus, but the statutory substitute for the writ of error *coram nobis*, Ill. Civil Practice Act. § 72, Smith-Hurd Stats. c. 110, § 196, and that the two remedies are mutually exclusive."

This question, which was not reached in the *White* and *Lutz* cases, is directly presented in the instant case. We submit that the considerations hereafter briefly developed clearly demonstrate that under the jurisprudence of Illinois, statutory *coram nobis* was clearly and plainly available to the petitioner in the instant case as an absolute matter of right and was the only remedy available. Under Point II, *post*, we argue that petitioner's failure to exhaust that remedy within the five year period does not vest him with a present right to *habeas corpus*.

The case of *People* v. *Green*, 355 Ill. 468, is precisely apposite. We respectfully bespeak attention to its holding. A study of that case peremptorily disposes of any question as to the availability of the statutory proceeding called *coram nobis*. In that case, petitions had been filed under the *coram nobis* provision above quoted, setting forth that, to quote the language of the Supreme Court of Illinois at page 470, "the defendant was not rep-

resented by counsel" and that evidence could be produced showing that he was not guilty of the charge. In each of several cases involved; the trial court vacated the judgment and granted a retrial of petitioner.

The Supreme Court of Illinois said at page 473:

> "A writ of error *coram nobis*, or a motion under the statute, is an appropriate remedy in criminal cases as well as civil and lies to set aside a conviction obtained by duress or fraud, or where by some excusable mistake or ignorance of the accused, or without negligence on his part, he has been deprived of a defense which he could have used at his trial, and which, if known by the court, would have prevented conviction. (*People* v. *Crooks, supra; Sanders* v. *State*, 85 Ind. 318, 44 Am. Rep. 29; *State* v. *Calhoun, supra;* 2 R. C. L. sec. 266; 18 L. R. A. 842, note: *People* v. *Perez*, 98 Pac (Cal.) 870). Since the judgment entered upon such proceeding is final and the proceeding is civil in its nature, either the State or the defendant is entitled to a review of the judgment of the court entered on such motion or petition."

This case plainly charts appropriate practice.*

Two other cases that are directly in point and that should be considered together are *People* v. *Drysch*, 311 Ill. 342 and *City of Chicago* v. *Nodeck*, 202 Ill. 257. The *Drysch* case states very clearly and precisely that in cases like the instant ones relief by way of *coram nobis* is peculiarly appropriate.

In the *Drysch* case it was contended that certain witness testified perjuriously and fraudulently. **In the Drysch case, there was no showing that any public official was privy to the fraud upon the courts.** The petitioner in

---

* "In *People* v. *Crooks, supra*, it was held that the sufficiency of the motion or petition may be raised by demurrer, plea of *nullo est erratum*, by motion to dismiss, by pleading special matters in confession and avoidance, or by making an issue of fact by traversing the allegations. Such was likewise the holding of this court in *Harris* v. *Chicago House Wrecking Co., supra.*" *People* v. *Green*, 355 Ill. 468, at 475.

the *Drysch* case relied upon the case of *City of Chicago* v. *Nodeck*, 202 Ill. 257. In the *Nodeck* case **there was a showing not only of fraud but of complicity on the part of counsel for one of the parties who was a public official.** The Supreme Court of Illinois, distinguishing the *Drysch* case from the *Nodeck* case upon grounds which are fatal to the petitioner in the instant cases, said at pages 348-349 (Emphasis supplied):

> "The defendant argues the proposition that where a verdict is obtained by the admitted perjury of a witness it may be ground for vacating the judgment even after the judgment term, citing *City of Chicago* v. *Nodeck*, 202 Ill. 257. It is held in that case that a court has power to vacate a judgment at any time after the expiration of the term where the court was without jurisdiction to enter the judgment, and also that where a judgment has been obtained through fraud, such fact constitutes a sufficient reason for vacating it after the term in which it was rendered. **The fraud, however, must be a fraud committed by one of the parties on the court and not the perjury of a witness.** In the case cited the fraud was the fraud of the City of Chicago, one of the parties to the suit. * * *"

In the *Nodeck* case, where counsel for the City was privy to the perjury, statutory *coram nobis* was available. In the instant case, police officers and the public defender, a state representative, are charged with participation in the denial of fundamental rights.

In other words, the Illinois rule is that if *without the privy of any party to the suit*, a witness commits perjury or if he is prevented from testifying, due process is not denied and neither *coram nobis* nor any other remedy is appropriate; for it is the purity of the tribunal and of public officers, not that of witnesses who testified falsely without knowing complicity of the state's representatives, that is required by due process.

But if, as the petitioner charges is the fact in the instant cases, the imposition upon the court, either by the profferance of perjured testimony or the suppressing of truthful testimony, is accomplished by the connivance of the parties, the judgment may be vacated. Of course, the complicity of public officials acting on behalf of the state in denying petitioners an opportunity intelligently to plead to an indictment and to procure witnesses constitutes a denial of due process if the state does not furnish adequate corrective remedy. Therefore, under the holding of the *Drysch* case, as explanatory of the *Nodeck* case, *coram nobis* is available as a matter of right, and not as a matter of grace; and the court has no discretion to deny it.

Another case that is much in point is *People* v. *Dabbs*, 372 Ill. 160. That case holds that the statutory proceeding in the nature of *coram nobis* is available where the petitioner claimed that "he was fraudulently deprived of his liberty by failure of the state's attorney to inform the court that Hughes was feebleminded, and therefore an incompetent witness against the defendant." Although the claim was held not to be supported by the evidence, the proceeding was regarded as appropriate. In other words, the *Dabbs* case (372 Ill. 160, *supra*) holds that unfair suppression of evidence affords a right to relief by *coram nobis*.

The distinctions between habeas corpus and statutory coram nobis are not formal but are substantial.

The distinctions between *coram nobis* and *habeas corpus* are important and substantial and are founded upon sound and practical considerations of juridical policy.

In the *first* place, the *coram nobis* proceeding must be instituted in the court wherein the judgment was rendered. This would mean that, in the instant cases, the petitioner's

charges, serious if true, would be tried in the venue where, at least presumably, the witnesses and counsel reside.

In the *second* place, the doctrine of *res judicata* attaches to the *coram nobis* proceeding **and an appeal lies from such judgment,** which is not the case with *habeas corpus.* This means that, under the *coram nobis* practice, either the petitioner or the state has a right to review by the Supreme Court of Illinois of the decision of the trial court. (*People* v. *Green,* 355 Ill. 468, already cited, recognizes the finality of judgments upon *coram nobis* by pointing out that the state might appeal from them.) But in Illinois, as at common law, the doctrine of *res judicata* does not apply to judgments refusing a writ of *habeas corpus.* Had either of the trial courts entertained the instant petitions and discharged the prisoner, the state would have had no appeal to or writ of error from the Supreme Court of Illinois.

In *People* v. *McAnally,* 221 Ill. 66, it is said of *habeas corpus* at page 68, that "an order in one proceeding before either a court or a judge thereof is not a final order from which an appeal or writ of error would lie and could not be pleaded as a bar to another or further proceeding." This means that, if Illinois is bound to afford the petitioner a remedy not by *coram nobis* but by *habeas corpus,* then it must afford him an indefinitely large number of such remedies, for he has a right to file as many petitions for *habeas corpus* as he chooses even in the same courts. *Every time that he makes his charges, they must be reinvestigated de novo* by subpoena of the presiding judge, all counsel, and all other witnesses.

II.

Due process is not denied by requiring petitioner to pursue his statutory remedy within five years.

Petitioner's characterization of the Illinois statutory substitute as "an uncertain remedy" is not supported by any indication that it is uncertain in the instant case. There are of course close, doubtful or "borderline" cases with respect to every juridical concept, both of substantive and of adjective law.

But the mere fact that one may conjure cases, suppositious or actual, in which *coram nobis* might be an uncertain remedy, just as one can easily discover cases in which it is doubtful whether the plaintiff should sue at law or in equity, or whether his remedy is in tort or for breach of contract, does not imply that in the instant case, the propriety of the remedy is not obvious. The instant petition charges that the petitioner had a defense that he was prevented from making by fraud or excusable mistake and that the matters of which he complains were not known to the court. It is therefore a classical case, a case *par excellence*, for relief by statutory *coram nobis*.

Illinois having afforded the petitioner an obviously appropriate remedy, (see cases cited, Point I, *ante*,) the question arises whether Illinois may, without violating the Constitution of the United States, require the petitioner to pursue that remedy within a reasonably generous period of time, which in this case is five years.

But this question is readily answered in the accents of this court's own decisions. This court has repeatedly held that, in criminal cases as well as in civil cases, due process is not denied if one whose rights have been infringed is

afforded an adequate opportunity to vindicate those rights; and that if such a person fails to pursue that remedy within a reasonable period fixed by a provision in the nature of statute of limitations, this court will not relieve him in an independent proceeding brought after the limitation period has run.

In *Goto* v. *Lane*, 265 U. S. 393, a *habeas corpus* case, the petitioner claimed denial of federal due process. This court, after holding that petitioner had an adequate remedy by writ of error within a period of time which had elapsed before he sought *habeas corpus*, said at page 402:

> "* * * If it erred in determining them," (that is, questions raised by petitioner) "its judgment was not for that reason void, *Ex parte Watkins*, 3 Pet. 193, 203; *Ex parte Parks*, 93 U. S. 18, 20; *Ex parte Yarbrough*, 110 U. S. 651, 654, but subject to correction in regular course on writ of error. If the questions presented involved the application of constitutional principles, that alone did not alter the rule. *Markuson* v. *Boucher*, 175 U. S. 184. **And, if the petitioners permitted the time within which a review on writ of error might be obtained to elapse and thereby lost the opportunity for such a review, that gave no right to resort to habeas corpus as a substitute.** *Riddle* v. *Dyche*, 262 U. S. 333. And see *Craig* v. *Hecht*, 263 U. S. 255." (Emphasis supplied).

It will be noted that in the excerpt quoted above this court explicitly said that the fact that petitioner's claim "did not alter the rule" and that he must assert such rights within the period fixed by a reasonable statute of limitations.

This court held in *Riddle* v. *Dyche*, 262 U. S. 333, that where a writ of error was available, failure to avail one's self of that remedy did not entitle the petitioner to a writ of *habeas corpus*. In that case the petitioner failed to preserve his rights by taking exception and preserving such points by a bill of exceptions.

The present rules of this court governing criminal procedure allow a convicted defendant only *five days* in which to perfect an appeal from a conviction in the federal courts; and this is true even though the convicted defendant raises claims of fundamental constitutional rights.

Due process is not denied merely by the unlawful acts, however outrageous, on the part of state officers unless the state, in the totality of its juridical process, denies the petitioner a fair opportunity to be heard upon his claims and to vindicate his rights. (*Mooney* v. *Holohan*, 294 U. S. 103.) But even if it were true that due process was denied by the mere unlawful acts of which the petitioner complains, no federal question is presented unless he has exhausted adequate and exclusively appropriate avenues to justice afforded him by the state. (*White* v. *Ragen*, 324 U. S. 760; *House* v. *Mayo*, 324 U. S. 42). In this case, Illinois afforded the petitioner five years in which to make his claims. Was this a reasonable and constitutional prerequisite to the assertion and vindication of his rights?

The period of limitations in *coram nobis* cases to impeach convictions rests upon the soundest grounds of judicial policy. *Coram nobis* (or its statutory substitute) is a remedy appropriate to raise questions of fact. Questions of fact depend upon the testimony of witnesses. Witnesses forget, disappear and die. May a comparatively young defendant, convicted of an atrocious crime, wait until after the death or disappearance of the presiding judge, the state's attorney, the officers who apprehended him or other witnesses to transactions in which he says he was denied due process of law, or until judges, prosecutors, officers and witnesses have forgotten the facts, and then, many years after conviction, make, for the first time, serious charges against the State? If he may, the authority

of the criminal law, which is the law by which all other law is implemented, is gravely compromised.

This is a very important case. Many dangerous men are now in prison for serious crimes. They have been there for years. If the State may not limit the time in which these men may make claims of fiendish brutality in convicting them, then the very principle which vindicates statutes of limitation and repose is set at naught *in the one class of cases in which society's interest is the greatest.*

We submit with the utmost earnestness that it would make a travesty of reason to hold that, though the state and federal governments may limit the time within which one man may sue another for ten dollars lest the defendant be deprived of the means of meeting an unfounded charge, the state may not limit the time within which persons who are found to have committed murders, rapes, robberies, burglaries or other serious offenses against the persons and properties of innocent citizens may make charges imputing bad faith on the part of the government that had convicted them.

There is no need to emphasize that, though the civil liberty of every citizen is precious to the United States Govment, the right of the state, not only to impose penalties for crimes, but to make those penalties effective is the very foundation of peace, order and security. Those penalties, which are society's last sanction against those who take the lives or violate the rights of others and who are not amenable to more gentle civil process, cannot be made effective if every criminal case is made subject to review, at least in respect of charges of corruption on the part of public officials, at any time after conviction that a prisoner seeks to utter such charges. Every consideration that underlies the principles of statutes of limitations is acutely exigent in the instant case and in all criminal cases.

II

A state statute of limitations will be enforced even though the right asserted is a federal right.

It may be suggested (although it has not been suggested thus far) that a state may not enforce a statute of limitations when the right asserted, if it asserts it all, is based upon the Constitution of the United States or other federal law.

But the contrary is well settled doctrine. In *Campbell* v. *Haverhill*, 155 U. S. 610, this court held that a state statute of limitations could and must be given effect in a suit based upon a claim of rights under the Constitution and acts of Congress relating to patents. We do not multiply authority for the point has not been raised and we do not anticipate that petitioner's counsel will controvert its general proposition that even federal rights must be enforced within the time fixed by state statutes applicable to the species of action which is appropriate.

In *Hughes Federal Practice Jurisdiction and Procedure*, section 3679, there is collected a wealth of authority for the principle that state statutes of limitation control even though the right asserted be found upon the Constitution and laws of the United States and even though the proceeding is brought in a federal court. If the federal courts will apply state statutes of limitation as against claims of federal rights, *a fortiorari*, the courts of states enacting a statute of limitation may apply it without violating the Constitution.

But there is another answer to the suggestion, if the suggestion should be made, that a state statute of limitations may be given effect in state courts even though the right claimed is asserted under federal law. That answer

is that this court has held, *not* that the unlawful acts of police officers, prosecuting counsel and the like *per se* deny due process of law, but that due process is denied by the state only when the state itself, in the totality of its sovereignty, in effect sanctions violation of civil rights by failing to afford corrective process. (*Mooney* v. *Holohan*, 294 U. S. 103.)

Petitioner makes no showing of duress or that he was prevented from making his claims with reasonable promptitude.*

Conclusion.

For the reasons urged in this brief, it is submitted that the judgments under review should be affirmed.

Respectfully submitted,

GEORGE F. BARRETT,
Attorney General of the State of Illinois,
Attorney for Respondent.

WILLIAM C. WINES,
Assistant Attorney General,
Of Counsel.

---

* Other Illinois prisoners have charged that until 1943, the wardens of Illinois penitentiaries held prisoners virtually *incommunicado*, insofar as their efforts, without the aid of counsel, to file petitions for writs of *habeas corpus*, writs of error, or other relief were concerned. Petitioner in the instant case makes no such charge and the court cannot take judicial notice of this practice which was found to exist in *Bongiorno* v. *Ragen*, 54 Fed. Supp. 973, but if petitioner could and did make such charge, then the five-year period for the filing of *coram nobis* would have been tolled by duress; and petitioner still has a remedy by *coram nobis* if he was in fact prevented from making application for *coram nobis* during any considerable time.

SUPREME COURT OF THE UNITED STATES.

Nos. 631 and 671.—October Term, 1945.

Lee Van Woods, Petitioner, 631 *vs.* Walter Neirstheimer, Warden, Illinois State Penitentiary, Menard, Illinois.	On Writ of Certiorari to the Circuit Court of Randolph County, State of Illinois.
Lee Van Woods, Petitioner, 671 *vs.* Walter Neirstheimer, Warden, Illinois State Penitentiary, Menard, Illinois.	On Writ of Certiorari to the Criminal Court of Cook County, State of Illinois.

[May 20, 1946.]

Mr. Justice Black delivered the opinion of the Court.

In 1940 the petitioner was indicted for murder in the Criminal Court of Cook County, Illinois. Adjudged to be guilty on an alleged plea of guilty, he was sentenced to serve ninety-nine years in the state penitentiary. In 1945 he filed two identical petitions for habeas corpus, one in the Criminal Court of Cook County and the other in the Randolph County Circuit Court. In summary the allegations of these petitions were:

On March 8th or 9th, 1940, Chicago policemen came to petitioner's home, accused him of murder, and arrested him. For a period of four days these policemen subjected him to mistreatment in an effort to force him to confess to the crime of murder. The policemen allegedly abused him, beat him with their hands, with blackjacks, and with clubs. At the end of four days, under threat of instant death if he failed to do so, petitioner signed a paper which he later discovered to be a confession. Petitioner averred that he was unable to employ counsel, that he had no counsel, and that he did not consult with counsel during the next two months while he was confined to jail. According to the allegations, petitioner was brought into court at the end of that period, and a public defender appeared as his counsel; but the public defender declined to permit petitioner to explain the circumstances sur-

rounding the confession. Moreover, despite petitioner's repeated assertion of his innocence, the defender allegedly entered a plea of guilty on behalf of petitioner. The allegations further assert that the public defender and the state's attorney threatened petitioner by telling him that he would burn in the electric chair if he did not keep his mouth shut, and that despite these threats petitioner pleaded not guilty and never did at any time consent to the guilty plea which is the basis for his ninety-nine year sentence.

Petitioner's contention before the two trial courts was that a judgment and sentence under these circumstances amounted to a denial of due process of law in violation of the Fourteenth Amendment to the United States Constitution. The Randolph County Circuit Court denied petitioner's application for habeas corpus "for want of jurisdiction and failure to state a cause of action." The Cook County Criminal Court granted the state's motion to dismiss, made on the ground that the petition on its face failed to state a cause of action. In neither court was petitioner afforded an opportunity to offer evidence to prove his allegations. Neither court wrote an opinion explaining its order. Since Illinois does not provide for appellate review of an order denying a petition for a writ of habeas corpus, the orders here involved were entered by the highest courts of the state that could have entered them. See *White* v. *Ragen*, 324 U. S. 760. This Court is consequently authorized to review these orders if they are based on decisions of federal questions. *Tucker* v. *Texas*, No. 87, decided January 7, 1946. Because of the serious violations of the Fourteenth Amendment alleged by the petitioner, and because of uncertainty as to whether denial of his petitions rested on an adequate state ground, we granted certiorari.

The state, through its Attorney General, concedes that the allegations of the petitions for habeas corpus, if true, would show that conviction and sentencing of the petitioner violated the due process clause of the Fourteenth Amendment. The state contends, however, that the applications for habeas corpus were not denied on the ground that the allegations, if proved, would fail to show a violation of due process. According to the state, the denials of petitioner's applications rested on the separate and distinct ground that in the Illinois state courts habeas corpus is not the proper

remedy for relief from judgments violating due process of law in the manner here alleged. The contention is that the exclusive relief against such judgments is provided by a statutory substitute for the common law writ of error *coram nobis*, Ch. 110, par. 196, Illinois Revised Statutes, 1945. The petitioner counters by calling attention to the fact that the statutory remedy is not available unless brought within five years after the rendition of a judgment; that the judgment and sentence against petitioner was rendered more than five years ago; that consequently, if petitioner has no remedy for habeas corpus, he has no remedy at all; that we should not assume that Illinois grants no relief to one whose imprisonment violates rights protected by the United States Constitution, cf. *Smith* v. *O'Grady*, 312 U. S. 329; and that we should therefore hold that habeas corpus is available to the petitioner.

From our investigation of the law of the State of Illinois we conclude that the denials of the applications in this case could have rested, and probably did rest, on the ground that habeas corpus is not the proper remedy in cases such as the one before us. For this reason we are without power to review the judgments, see *Williams* v. *Kaiser*, 323 U. S. 471, 477, and the writs of certiorari must be dismissed. The Supreme Court of Illinois has repeatedly held that a court of the state has jurisdiction of a habeas corpus proceeding only where the original judgment of conviction was void or where something has happened since its rendition to entitle the petitioner to his release. According to Illinois Supreme Court decisions, this means that if the petition and return in the habeas corpus proceeding show that the court which rendered the original judgment had jurisdiction over the person and over the subject matter, and nothing has happened since the conviction to entitle the applicant to his release, the court to which the petition is addressed lacks power to discharge the prisoner.[1] The petitions for habeas corpus here involved did not challenge the court's jurisdiction over the person, nor did they allege that anything had happened since the rendition of the judgment which would entitle the petitioner to his release. The allegations that petitioner did not consent to the guilty plea

[1] See e. g. People v. Zimmer, 252 Ill. 9, and cases discussed; People v. Siman, 284 Ill. 28, 32; People v. Shurtleff, 355 Ill. 210; People v. Thompson, 358 Ill. 81; People v. Bradley, 391 Ill. 169.

and that he was not represented by proper counsel, moreover, did not challenge jurisdiction over the subject matter, within the meaning of that term as used in defining the power of Illinois courts to release prisoners on habeas corpus.[2] Consequently it seems highly probable that under the Illinois decisions the writ of habeas corpus was not the proper remedy in this case. That this is so is further borne out by the fact that in Illinois orders denying petitions for habeas corpus are not subject to appellate review *People* v. *McAnally*, 221 Ill. 66, 68. We cannot assume that Illinois would so far depart from its general appellate procedure as to deny appellate review of orders denying applications for habeas corpus, if such applications were the proper procedure for challenging violations of fundamental rights to life and liberty guaranteed by the United States Constitution.

Since the record thus shows that petitioner's applications for a writ of habeas corpus were probably denied because he did not seek the proper remedy under Illinois law, it does not appear that the judgments we are asked to review do not rest on an adequate non-federal ground. Nor do the denials of petitioner's applications for habeas corpus present a federal question merely because the five-year statute of limitations on the statutory substitute for the writ of error *coram nobis* has expired. Petitioner claims that this leaves him without any remedy in the state courts. But we do not know whether the state courts will construe the statute so as to deprive petitioner of his right to challenge a judgment rendered in violation of Constitutional guarantees where his action is brought more than five years after rendition of the judgment. Nor can we at this time pass upon the suggestion that the Illinois statute so construed would itself violate due process of law in that a denial of that remedy, together with a denial of the

[2] See *People* v. *Fisher*, 340 Ill. 250, where the Supreme Court of Illinois made the following statement on p. 260:

"If the jury is an essential part of the tribunal without which the court has no jurisdiction of the subject matter, it is not discernible how, upon a plea of guilty in a criminal case, a valid judgment can be rendered. Yet the power of the court, without a jury, upon such a plea, to find the defendant guilty and render judgment is unquestioned. A court's jurisdiction of the subject matter is not determined by the plea which a person charged with a crime may interpose. Before he appeared at the bar of the tribunal, it either was or was not vested with jurisdiction of the subject matter of his cause. If the court possessed such jurisdiction, it was conferred by or pursuant to some provision of the constitution, and not by the act or consent of the defendant."

writ of habeas corpus, would, taken together, amount to a complete deprivation of a state remedy where Constitutional rights have been denied. We would reach that question only after a denial of the statutory substitute for the writ of error *coram nobis* based on the statute of limitations had been affirmed by the Supreme Court of the state.[3] Furthermore, it cannot be doubted that if the State of Illinois should at all times deny all remedies to individuals imprisoned within the state in violation of the Constitution of the United States, the federal courts would be available to provide a remedy to correct such wrongs. *Ex parte Hawk*, 321 U. S. 114.

Dismissed.

Mr. Justice JACKSON took no part in the consideration or decision of these cases.

[3] A judgment in a *coram nobis* proceeding is final and appealable in Illinois. See *People* v. *Green*, 355 Ill. 468.